Jany 30. 79. Arg'd W. H. Swayne

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 167.

FRANK F. CASE, RECEIVER FIRST NATIONAL BANK OF NEW ORLEANS, APPELLANT,

vs.

G. T. BEAURBGARD ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED SEPTEMBER 28, 1876.

43 Law 507

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.
In chancery.

CHA'S CASE, RECEIVER OF 1ST NATIONAL Bank of New Orleans,
vs.
G. T. BEAUREGARD AND OTHERS. } No. 5931.

Bill of complaint —Filed July 10th, 1869.

To the honorable the circuit court of the United States for the fifth circuit and district of Louisiana, holding sessions at New Orleans. In chancery:

Humbly complaining unto this honorable court your orator, Charles Case, a citizen of the State of Indiana, and also receiver of the First National Bank of New Orleans, a company duly incorporated under the laws of the United States and located in the city of New Orleans, having been duly appointed receiver as aforesaid under the laws of the United States, and as such authorized to bring this suit before this honorable court against Gustave T. Beauregard, Thomas P. May, who are both citizens of the State of Louisiana, residing in this district, and Augustus C. Graham, who is a citizen of the State of New York, and
2 also against Joseph Hernandez and G W. Binder and Alexander Bonneval, who are also citizens of the State of Louisiana, residing in this district, and the New Orleans and Carrolton Railroad Company, a company duly incorporated by the laws of the State of Louisiana, and domiciliated and located in this district, and also against the Fourth National Bank of New York, a company duly incorporated under the laws of the United States and domiciliated and located in the city of New York, respectfully sheweth:

That on or about the 12th day of April, 1866, A. D., the said G. T. Beauregard leased from the said New Orleans and Carrolton Railroad Company the railroad belonging to the said company, together with real estate belonging to said company, the rolling stock thereof, the movable property of the said company, and all the rights, privileges, and franchises of the said company for and during the term of twenty-five years, in the manner and form more fully set forth in the Exhibit H, which is a copy of the said lease and which is hereto annexed as part of this bill.

That although the said lease was made in the names of said
3 Beauregard, it was so made with the view of a future partnership for the carrying on of the said business.

That on or about the 18th day of April, 1866, the said Beauregard entered into a contract with the said T. P. May and the said A. C. Graham, such as is more fully set forth in the annexed copy of the said contract hereto annexed as part of this bill and marked "Exhibit B." Your orator alleges that under the said contract of copartnership the said parties conducted the business for which it was intended.

That the railroad was remodelled, refitted, and changed from steam cars to horse cars, requiring heavy outlays, and many other expenses were incurred by said partnership in their said business.

That in addition to the foregoing expenses the partnership, in order

the more successfully to carry on the said business, made large purchases of real estate, to wit:

1st. That purchased from William C. Raymond, by act before Amadee Ducatel, notary public, in the parish of Orleans, on the fifth day of May, 1866, consisting of a square of ground bounded by Napoleon
4 avenue, Berlin, Nayades, and Apollo streets, in the city of Jefferson, with all the improvements thereon as is more fully described by the annexed copy of said act marked "Exhibit C."

2nd. That purchased from Samuel A. Kohn, by act before the same notary, dated April 30th, 1866, consisting of a square of ground in the city of Jefferson, bounded by Nayades, Apollo, Milan, and Berlin streets, as is more fully set forth in the annexed copy of said act marked "Exhibit D."

3rd. That purchased from the said New Orleans and Carrollton Railroad Company, by act before Selim Magner, notary public in the parish of Orleans, on the 29th day of June, 1866, consisting of a triangle of ground in the town of Carrollton, in the parish of Jefferson, bounded by Levee street, Carrollton avenue, and First street, as is more fully described in the annexed act marked "Exhibit E." The said property was purchased in the name of Beauregard alone, but was, in fact, purchased for the partnership, was paid for out of the partnership funds, and belongs to the said partnership.

5 4th. That purchased from the New Orleans and Carrollton Railroad Company, known as the Horse Station, situated in the first district of New Orleans, in the square bounded by S't Charles, Felicity, Apollo, now called Carondelet, and Polymnia streets, consisting of seven lots as is more fully and particularly described in the annexed copy of the act of conveyance passed before Selim Magner, notary public, in New Orleans, on the 15th day of January, 1867, and which is made a part of this bill and marked "Exhibit F." The said purchase was made in the individual name of said Beauregard, but was, in fact, purchased for the partnership, was paid for by the partnership, and belonged to the partnership.

5th. In addition to the property described as purchased by the partnership, the said firm, by their lease from the said New Orleans and Carrollton Railroad Company, were entitled to the use of a square of ground situated on the corner of Napoleon avenue and S't Charles streets, in the parish of Jefferson, on which they made and erected extensive and valuable improvements, which belonged to the said firm.

6 Your orator alleges that all or nearly all the money paid by the said Beauregard, Graham, and May for the purchase of the said lease, for the improvements and alterations of the railroad, and for the equipment and furnishing of stock and other necessary materials, and for the purchase of the real property above described, and making improvements thereon as well as on the property leased, in fact all or nearly all the money expended by the said partnership in the said business was obtained from the before mentioned First National Bank of New Orleans, and that the said partnership were justly indebted to said bank therefor, none of which indebtedness has ever been paid.

That the said partnership opened an account with the said bank in the name of the said G. T. Beauregard, lessee.

That although the account stood in this manner upon the books of the bank, it was in reality the account of the said partnership for which the partnership was justly and legally liable. A copy of the said ac-

count is hereto annexed as part of this bill and marked "Exhibit G."

7 That the balance which appears to be still due by said account is only seventy-two thousand and eight $\frac{89}{100}$ (72,008$\frac{89}{100}$) dollars. But that is not the real amount due by said partnership to said bank, the true amount of the indebtedness of said firm to the said bank being two hundred and thirty-seven thousand and eight $\frac{89}{100}$ (237,008$\frac{89}{100}$) dollars and interest, as hereinafter more fully and particularly set forth.

Your orator alleges that the First National Bank of New Orleans was incorporated and was organized for business about the 28th day of November, 1864.

That the said T. P. May and the said A. C. Graham were leading and active founders of the said bank.

That the said bank was organized by the election of B. F. Flanders as president, and A. C. Graham cashier.

That the said T. P. May was one of the prominent and active directors of the bank from the time of its commencement.

That the said A. C. Graham was elected president of said bank July 12th, 1864, and continued to act as president of the said bank

8 until the 12th day of July, 1866, at which time he absented himself, going to the city of New York. Upon his leaving, the said T. P. May was chosen president, to act during the absence of said Graham. The latter not returning again to New Orleans, the said May was elected president on or about the 6th day of October, 1866. He continued to act in that capacity until about the 8th day of April, 1867, at which time David Burke Forbes, the former vice-president of the bank, was elected president and continued so to act until the bank was closed by proceedings by the government of the United States.

That the said T. P. May was a director of the bank, and at all times during its existence exercised a leading influence and control over the bank and its administration.

That while the said T. P. May was acting as president of the bank the aforesaid account of partnership of Beauregard, Graham, and May, which stood on the books of the bank in the name of "G. T. Beauregard, lessee," being largely overdrawn, in order to settle the overdraft nominally on the books of the bank, he, said May, drew on or

9 about the 14th day of September, 1866, a promissory note in the name of the said Beauregard, lessee, payable to the First National Bank of New Orleans, on demand, for the sum of forty thousand dollars.

That the said May drew the said note in the name of the said Beauregard, lessee, under a power of attorney from Beauregard which fully authorized him to do so, and to bind the said Beauregard thereby.

That he caused the amount of said note to be credited to the said account of said Beauregard, lessee, which was in fact, as herein previously stated, the account of the said partnership, and the amount thereof was used for the benefit of said partnership as hereinbefore stated. That no attempts were ever made to use or collect the said note by the said May, or his successors in office. It remained in the possession of the bank until the final closing up thereof, and is now in the possession of your orator as receiver. The said note is hereto annexed as part of this bill.

Your orator further alleges that the said account of Beauregard, lessee, being again largely overdrawn, to wit, about one hundred

10 and twenty-five thousand ($125,000) dollars, the said T. P. May, on or about the 19th day of March, 1867, drew an instrument purporting to be a bill of exchange in favor of the said First National

Bank, payable at forty-five days after sight, on the said A. C. Graham, in New York, for the sum of one hundred and twenty-five thousand ($125,000) dollars, and caused the same amount to be placed to the said account of Beauregard, lessee.

That the said bill of exchange was never stamped, was never forwarded for presentation, for acceptance, or collection, but remained in the bank until it came to the possession of your orator as receiver thereof. The said bill of exchange is hereto annexed as part of this bill.

Your orator alleges that both of the preceding-mentioned sums were taken from the bank by the said May, in violation of his duty as an officer of the bank and in fraud of the rights of the bank.

That the money thus obtained was used for the benefit of the partnership existing between him and Beauregard and Graham in purchasing property, paying for the lease, and in carrying on the business of
11 the partnership, and that all of the said partners are liable therefor in solido, with the interest on the same from the date of the conversion of the said money to their use, to wit, on the amount of said note of forty thousand dollars from the said 14th day of September, 1866, and on the one hundred and twenty-five thousand dollars from the 19th day of March, 1867, and on the seventy-two thousand and eight 89-100 dollars from the 25th day of April, 1867.

Your orator further avers that for the payment of the above sums the said First National Bank had a privilege and lien upon all the property of the said partnership in preference to the individual creditors of any one of the said partners. That the said property could not be legally conveyed away in payment of the individual debts of any one of the partners, or appropriated to the use of any one of the partners, so as to defeat the rights of the bank against said partnership property.

Your orator avers that John Jay Knox, an officer of the Government of the United States and special agent of the Treasury Depart-
12 ment of said government, duly authorized and commissioned therefor, took possession of the said First National Bank, its books and all its assets, and closed the same as an acting bank on or about the 13th day of May, 1867.

That he thus became aware, and the said government through him as their agent, of the said indebtedness of the said partnership of Beauregard, Graham, and May to the said bank, and was also aware of the true origin of said indebtedness, and of the fact that the business of the said partnership was mainly carried on by the money of the bank, and that the funds of the bank invested in the property of the partnership had not been paid.

That, notwithstanding this knowledge, the said Government of the United States, through John Jay Knox, its agent, induced the said T. P. May to transfer his interest in said partnership to said government, as appears by act 14th, May 1867, before A. Hero, notary public, annexed and marked "Exhibit N."

And further, on the 16th May, more formally to transfer and convey to the said government the interests owned by said T. P. May and the said A. C. Graham in the said partnership, and all its property,
13 in payment of an alleged indebtedness due by said May individually and personally to the said government, as more fully appears from the annexed copy of the act passed before Andrew Hero, a notary public in New Orleans, dated 16th day of May, 1867, which is made a part of this bill and marked "Exhibit H."

Your orator is informed and so charges that this pretended conveyance by said May of the interest of said Graham to the said government was made without any legal authority from said Graham to said May, and was further in violation of and a fraud upon his, Graham's, rights, and is consequently null and void.

Your orator further charges that even if May was authorized to transfer Graham's interest, which is denied, that still the conveyance made by him to pay his individual debts in both of the preceeding acts was illegal and was a fraud upon the rights of the First National Bank as a creditor of the partnership.

Your orator further alleges that the Government of the United States having, by the illegal means above set forth, gotten possession of
14 the interests of the said May and Graham in the said partnership and property thereof, did, by act passed before Gustave Le Gardeur, j'r, notary public, in New Orleans, on the 21st day of August, 1867 (the said G. T. Beauregard intervening and becoming a party thereto), transfer and convey the interest of May and Graham, acquired as aforesaid, from T. P. May to the said Alexander Bonneval, G. W. Binder, and Joseph Hernandez. A copy of said act is hereunto annexed as part of this bill, marked "Exhibit I."

That subsequently, to wit, on or about the 31st day of October, 1867, the said United States Government entered into an agreement with the said Bonneval, Binder, and Hernandez, by which the preceeding act was annulled and a new conveyance made by the said government of the said property to the said parties, as more fully appears from annexed copies of two contracts, dated October 31st, 1867, which are made a part of this bill and marked "Exhibits J & K."

Your orator further alleges that the said Bonneval, Binder, and Hernandez, and the said Beauregard, entered into an agreement on or about the 15th of October, 1867, with the said New Orleans and Carrollton Railroad Company, by which the said lease was surrendered
15 to the said company, and all the property belonging to the said partnership of Beauregard, Graham, and May. This was done in consideration of the said company assuming all the debts and liabilities of the said partnership, and growing out of the said lease; and also giving four thousand shares of the capital stock of said railroad company to said Beauregard, Bonneval, Binder, and Hernandez, one-third thereof to the said Beauregard, and the remaining two thirds thereof to the said Bonneval, Binder, and Hernandez, all of which more fully appears from the copy of an act passed before Selim Magner, a notary public in New Orleans, on the 15th day of October, 1867, which is hereunto annexed as part of this bill and marked "Exhibit L."

Now your orator alleges, and so charges, that at the time at which all of the before-mentioned acts were passed and conveyances and transfers made, the said Bonneval, and Binder, and Hernandez, and the said Beauregard, and the said New Orleans and Carrollton Railroad Company, and the said Government of the United States, and the said T. P. May, all were well aware of the indebtedness of the said
16 partnership of Beauregard, Graham, and May, and also of the fact that the money of the said First National Bank had paid for the property conveyed, without any reimbursement having been made to the bank. Under these circumstances, your orator charges that said conveyances and transfers were illegal and fraudulent, and that all of the before-mentioned conveyances and transfers of the property of the said partnership, or, if any separate interest of the parties in the partnership, are null and void, and should be so decreed by this honor-

able court, and the said property be decreed to be liable for the debt due to the said First National Bank.

Your orator further alleges that on or about the 8th day of May, 1867, the said A. C. Graham transferred and conveyed his interest in the said partnership of Beauregard, Graham, and May to the said Fourth National Bank of New York, as more fully appears from the copy of the act hereunto annexed and marked "Exhibit M."

That although the said instrument appears on its face to be an absolute conveyance of his, Graham's, interest, yet in truth and in fact it was only made for the purpose of indemnifying the said Fourth
17 National Bank against certain liabilities which that bank had contracted on account of and for the benefit of the said First National Bank of New Orleans.

Your orator cannot state the amount of the indebtedness of the said First National Bank to the Fourth National Bank, growing out of the payment of said liabilities by the said Fourth National Bank, because the amount depends or may depend upon what has been or may be realized from other securities in the hands of the said Fourth National Bank, and for which said Graham had given his personal guarantee to said Fourth National Bank.

Inasmuch as this conveyance was made for the benefit of and in the interest of the said First National Bank, your orator does not seek the avoidance thereof, but is desirous it should be carried out according to the real intentions of the parties making it. In order to effect this object it is necessary that the property should be sold, and a settlement made with the said Fourth National Bank. The surplus remaining after settlement with the said Fourth National Bank should be decreed to be liable to the payment of the debt due by the said partnership,
18 Beauregard, Graham, and May, to the First National Bank.

Your orator alleges that the said sum of two hundred and thirty-seven thousand and eight $\frac{59}{100}$ dollars with interest as aforesaid, is still due and unpaid by the said Beauregard, Graham, and May, and that they neglect and refuse to pay the same.

That the said Beauregard and Bonneval and Binder and Hernandez and the New Orleans and Carrollton Railroad Company refuse to permit the property of the said partnership now illegally in their hands to be applied to the payment of the debts of the said partnership; and further, there can be no settlement with the said Fourth National Bank without a sale of the property, and that these acts and doings of the defendants in the premises as hereinbefore set forth are contrary to equity and good faith. In consideration whereof and forasmuch as your orator is entirely remedyless in the premises according to the strictness of the rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable.
19 To the end, therefore, that the said defendants may be ordered to do what is just and proper in the premises, and the necessary decrees therefore may be obtained, and that said G. T. Beauregard, A. C. Graham, and Thomas P. May be ordered in solido to pay your orator as receiver of the said First National Bank of New Orleans as aforesaid, the said sum of two hundred and thirty-seven thousand and eight $\frac{59}{100}$ ($237,008 $\frac{59}{100}$) dollars, with interest as hereinbefore set forth.

And that the various acts of sale, transfer, and conveyance of the partnership property of the said partnership of said Beauregard, Graham, and May hereinbefore described (except the one by said Graham to the said Fourth National Bank), be declared null and void, to wit:

The transfer made by said T. P. May to the United States on the 14th May, 1867, before A. Hero, notary public.

Also the act made before the same notary on the 16th of May, 1867, by the said T. P. May transferring the interest of himself and A. C. Graham to the United States.

Also the transfer and conveyance made by the United States to Bonnavel, Binder, and Hernandez by act passed before G. Le
20 Gardeur, j'r, notary public, on the 21st day of August, 1867.

Also the two acts made on the 31st of October, 1867, between the United States and Bonneval and Binder and Hernandez.

Also the act between the New Orleans and Carrollton Railroad Company and said G. T. Beauregard, and A. Bonneval, and G. W. Binder, and Joseph Hernandez, called the act of fusion passed before Selim Magner, notary public, on the 15th day of October, 1867.

That these acts be declared specially null and void as against the rights of your orator, and that the property therein conveyed and transferred be decreed to be liable to the payment of the amount due to the said First National Bank of New Orleans.

And further, that the marshal of this honorable court be ordered to seize and sell the same in due course of law. And that after the payment of the amount due to the Fourth National Bank of New York out of the interest of said A. C. Graham, the balance to be paid over to your orator as receiver, &c., to the amount of the claim of the First National Bank of New Orleans, the balance of the proceeds to be
21 disposed of as the law may direct.

And that your orator may have such other and further relief in the premises as the nature of the case requires,

May it please this honorable court to grant unto your orator the most gracious writ of subpœna of the United States of America to be directed to the said G. T. Beauregard, T. P. May, and A. C. Graham, composing a partnership, individually and as members of the firm.

Also to the New Orleans and Carrollton Railroad Company, represented by the president thereof.

Also to Alexander Bonneval, G. W. Binder, and Joseph Hernandez.

Also to the Fourth National Bank of New York, represented by P. C. Calhoun, the president thereof, commanding them and each of them, at a certain day, to appear before this honorable court, and then and there to answer all and singular the premises and to perform and abide such order and decree therein as to this honorable court shall seem meet, and your orator shall ever pray, etc., &c.

22 Your orator further represents that, under the aforesaid act of fusion between the said New Orleans and Carrollton Railroad Company and G. T. Beauregard, and Alexander Bonneval, and G. W. Binder, and Joseph Hernandez, the before mentioned four thousand shares of the capital stock of the said railroad company were given to the said Beauregard, Bonnavel, Binder, and Hernandez, in lieu of the property belonging to the said partnership of Beauregard, Graham, and May, and that complainant fears that the said stock may be transferred by the said parties to third persons, greatly to the injury and embarrassment of the rights of complainant as receiver as aforesaid.

He therefore prays that the said Beauregard and Bonneval and Binder and Hernandez be enjoined by order of this honorable court and restrained from transferring, alienating, or encumbering the said stock, or any part thereof, in any manner, to the prejudice of the rights of the complainant; and that the said New Orleans and Carrollton Railroad Company be also required from permitting or recognizing in any

manner any such transfer of said stock to the prejudice of the
23 complainant's rights as receiver as aforesaid, and for all other relief in the premises, &c., &c.

(Signed) J. D. ROUSE,
Sol. for Complainant.

U. S. OF AMERICA,
State of Louisiana:

U. S. circuit court, 5th circuit, district of Louisiana.

The above-named Charles Case, being duly sworn, on his said oath says that all the matters and things stated in the foregoing bill of complaint on information he believed to be true, and that all the other several allegations therein contained are true in substance and in fact.

(Signed) CHAS. CASE.

Sworn and subscribed before me this 10th day of July, 1869.

(Signed) D. URBAN,
U. S. Comm'r.

24 Note—Filed with bill, July 10th, 1869.

U. S. circuit court.

CHAS. CASE, RECEIVER 1ST NAT'L BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

$40,000.] NEW ORLEANS, *Sept.* 14, 1866.

On demand I promise to pay the First National Bank of New Orleans, or order, forty thousand dollars, for value received, with interest at the rate of per centum per annum from date until paid, having deposited with them, as collateral security for the payment of the same,

_____.

(Signed) G. T. BEAUREGARD, *Lessee*,
per pro. T. P. MAY.

[$20 internal revenue stamp, canceled.]

(Endorsed on the back:)

I do hereby waive protest on the within note.

F. J. HERN.

Bill of exchange.—Filed with bill marked "P," July 10th, 1869.

U. S. circuit court.

CHAS. CASE, RECEIVER 1ST NATIONAL BANK of New Orleans,
vs.
G. T. BEAUREGARD AND OTHERS. } No. 5931.

25 1.

Exchange for $125,000.

NEW ORLEANS, *March 19th*, 1867.

Forty-five days after sight of this first of exchange, second unpaid,

pay to the order of myself one hundred & twenty-five thousand dollars, value received, and charge the same to account of—

Yours, tr'y,
(Sig'd) T. P. MAY.

To A. C. GRAHAM, Esq.,
3 *Bond St, New York.*
No. .

2.

Exchange for $125,000.

NEW ORLEANS, *March 19th*, 1867.

Forty-five days after sight of this second of exchange, first unpaid, pay to the order of myself one hundred & twenty-five thousand dollars, value received, and charge the same to account of—

Yours, t'uly,
(Sig'd) T. P. MAY.

To A. C. GRAHAM, Esq.,
3 *Bond St, New York.*
No. .

Both 1 & 2 endorsed on back: T. P. May.

Exhibit A.—Filed with bill, July 10, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L B'K OF N. O., *vs.* G. T. BEAUREGARD AND OTHERS. } No. 5931.

26 Lease of the New Orleans and Carrollton Railroad Company to G. T. Beauregard, 12th April, 1866. Registered in the parish of Jefferson, in book I J, folio 312.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this twelfth day of April, eighteen hundred and sixty-six, before me, Selim Magner, a notary public, duly commissioned and sworn in and for the parish of Orleans, personally came and appeared George Currie Duncan, esquire, of this city, president of and herein acting for the "New Orleans and Carrollton Railroad Company," and, moreover, authorized to act in the premises by virtue of a resolution of the board of directors of said company adopted at their meeting held on the tenth day of April current, a certified copy whereof is hereunto annexed as part hereof, who declared that he does by these presents, for and on behalf of the said New Orleans and Carrollton
27 Railroad Company, lease and let unto Gustave Toutant Beauregard, esquire, of this city, here present, and accepting for himself and his heirs, all and singular the railroad track and appurtenances of the said New Orleans and Carrollton Railroad Company as hereinafter set forth; which lease is to commence and to be computed from the sixteenth day of April current, and to continue for the full term and space of twenty-five years from said date, and which lease is made on the following terms and conditions, to wit:

1st. Said lessee shall pay, hire, and rent for said railroad and appur-

tenances at the following rates, to wit: Twenty thousand dollars for the first year of this lease and an additional sum of five hundred dollars to each and every year's rent until the termination of this lease, by reason of which the last year's rent would amount to thirty-two thousand dollars, and all which rents shall be paid by said lessee monthly, at the end of each and every month of this lease, on the simple receipt of said company, the present lessors, or that of their duly authorized officer or agent.

28 2d. The main track of the said railroad, its branches (in Jackson street, Louisiana avenue, and Napoleon avenue), sidling, and turn-tables, from Dublin street, Carrollton, to New Orleans, feed on hand, animals and other appurtenances of said road, rolling-stock, and fixtures of stables are hereby transferred free of charge to said lessee for the purposes of this lease. Said lessee shall have the right of selling the steam-engines, cars, and the appurtenances thereof for the purpose of purchasing horse cars, and horses and mules, and arranging for horse-car purposes the railroad tracks from Tivoli Circle to Carrollton and to the river, and on the express condition that he, the said lessee, shall furnish all additional sums required to complete said change or changes.

3rd. The square of ground in Carrollton, bounded by Dublin, Thompson, Madison, and First streets, with all the buildings, sheds, shops, &c., thereon, are likewise leased and let to him, said Beauregard, for the term and space of one year from the date of this lease, at a rent of fifteen hundred dollars, to be payable monthly, on the simple re-

29 ceipt of said company or their agent, the lessors, however, reserving to themselves the right of leaving on said square of ground such moveable property as they may find or deem convenient; and, furthermore, the use of the second-story office at Carrollton, and also the use of the storeroom, provided the latter does not interfere with the current wants of the lessee or with his business.

4th. All the rails, switches, cross-ties, and the appurtenances of the road under the passengers' depot, presently leased for one year, shall revert to the said lessee at the expiration of said year.

5th. The said lessee shall construct, at his own cost and expense, a double track on Baronne street from Triton Walk to Canal street, and a turn-table at the junction of said two streets, or a single track through S't Charles and Canal streets to Baronne street; and in order to obtain the right of way for said purposes, the said lessee shall have the right of offering to the city authorities of New Orleans, on the part of the New Orleans and Carrollton Railroad Company, to abandon the privilege of using steam-engines on said road within the city limits;

30 but all right of way or any other privilege must be obtained in the name of said company, the present lessors, and for and during the whole term of the charter of said company.

6th. The said lessee shall hold and possess, free from rent, during the whole term of this lease (he paying all taxes thereon), the square of ground at Napoleon avenue near the railroad belonging to said company, the present lessors, and said lessee shall have the right to construct on said square of ground such buildings as shall be required for his railroad purposes, all which buildings and improvements shall be insured by him, said lessee, at his own cost, and all which buildings and improvements shall revert to the said lessors free of cost, charge, or expense at the expiration of this lease; and in case any of the buildings which may be constructed by said lessee should be destroyed by fire, the amount of insurance recovered shall be immediately employed by said lessee in the reconstruction of said buildings.

7th. The said lessee shall have the use of the stables and other buildings belonging to said lessors on S't Charles street, between Fe-
31 licity and Polymnia streets, free of all charges (including taxes and insurance), until the said lessee shall have constructed for his railroad use other stable' and buildings on the square of ground situate on Napoleon avenue, near the railroad referred to in article sixth, provided that this privilege to said stables and buildings on S't Charles street shall terminate on the thirty-first of December, eighteen hundred and sixty-six.

8th. The said lessee shall have the right to take up such branch roads to the river, from Canal street to Carrollton, as may be intersected by other street railroads, and to use of such rails in repairing the main track on any other street from Tivoli Circle to Canal street, thence to Barrone street.

9th. Said lessee shall not have the right to use or claim the use of any other stables or buildings belonging to said lessors than those already mentioned.

10th. At the expiration of this lease the said road, main track, branches, and sidings, the feed on hand, materials for repairs, rolling-stock, buildings, mules, horses, and other appurtenances of said road, rolling-stock and appurtenances and stables belonging or attached thereto, shall be equal in value to those delivered to said lessee, to
32 be established by the inventory thereof, to be taken as set forth in article eleventh of this lease, and the whole shall revert, all in good order and condition, to the said New Orleans and Carrollton Railroad Company, free of charges, expenses, liens or incumbrances of any kind or nature.

11th. An inventory to be hereto annexed, signed by said parties and paraphed by me, notary, shall be taken by two experts, one appointed by said lessors and one by said lessees, of all the movable property of the said lessors to be delivered over to said lessee, to which inventory and every item therein shall be affixed the value thereof; and in case of difference of opinion or disagreement between said experts, an umpire shall be named by the said two experts; and it is hereby well understood that should any loss accrue to said lessee upon sales which he may make of any portion of the movable property within eighteen months from the date hereof, such loss shall be in reduction of the amount of said inventory, provided always that after the expiration of said eighteen months from the date hereof no claim for such reduction shall be made on the part of said lessee, and
33 at the expiration of this lease the value of the movable property to be turned over by said lessee to said lessors shall be determined by experts in the same manner as above set forth.

12th. All taxes (government, State, or municipal) which may be assessed on the property leased, or on its gross receipts or income, shall be borne and paid for by the said lessee during the term of this lease, and the said lessee shall assume all the obligations imposed by the charter of said company and be personally responsible, with his securities hereinafter named, should any violation thereof impair the rights of said New Orleans & Carrollton Railroad Company.

13th. The said lessee also does assume all liabilities for accident to limb, life, or property occurring on the road during the term of this lease.

14th. In case the said lessee should at any time during the term of this lease fail or refuse to pay the rent as stipulated, the said lessors shall have the right to rescind this present lease, and in that event the

lessee shall have no claim for remuneration for any improvements or additions made by him to the road or its appurtenances.

15th. All the presently leased premises, the branches, rolling-
34 stock, and other appurtenances, shall be transferred to said lessee on the sixteenth day of April, current, free from all claims for debts, taxes due, and other similar incumbrances, and the lease for the office of said railroad, at No. 15½ on Baronne street, shall likewise be transferred to said lessee, who shall pay the present rent for the same until the first of November, 1866, the term of said lease.

16th. The said lessee, after obtaining the consent of the mayor and council of Carrollton, shall have the use during the term of this lease of that portion of the Jefferson and Lake Pontchartrain Railway Company, extending from the New Orleans and Carrollton Railroad Company depot to the upper limit of the town of Carrollton, he, said lessee, in such case paying to the said New Orleans and Carrollton Railroad Company the value of the iron now on said portion of said road, which he agrees to return in good order and condition at the end of this lease to the said New Orleans and Carrollton Railroad Company.

17th. And it is furthermore agreed that the president and secretary of said New Orleans and Carrollton Railroad Company shall at all times have free passage on the cars of said lessee.

35 18th. The said lessee shall not have the right of transferring the lease or of underletting the presently leased premises without the written consent of the board of directors of the said New Orleans and Carrollton Railroad Company.

And thereupon personally came and appeared and intervened to this act Mess'rs Thomas P. May and Augustus C. Graham, both of this city, who, having taken cognizance of this present act of lease, declared that they do hereby bind themselves and their heirs in solido with the said present lessee to said New Orleans and Carrollton Railroad Company, their successors, and assigns, as well for the true and faithful compliance on the part of said Beauregard, with all the clauses, conditions, and stipulations herein contained as for the true and punctual payment of the rents specified herein.

The U. S. internal-revenue stamps of sixty-five dollars on this act are hereto attached.

This done and passed in my office at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, who sign these presents with the said appearers, and me, notary, after reading
36 thereof.

And before signing these presents, it has been further agreed and stipulated that said lessee shall have and enjoy joint use and occupation with the lessors of the Tivoli Circle depot up to and until the 31st day of December next, 1866, provided the lessee does not interfere with the uses that the lessors may have of the same, which uses, however, shall not interfere with the occupation of said building by the lessee as a passenger and freight-shed; and provided moreover that said lessee shall keep up the fences around said property, and shall claim no part

of the revenues derived by the lessors from the stalls, &c., in said building.

(Signed) G. CURRIE DUNCAN,
Pres't.
" G. T. BEAUREGARD.
" A. C. GRAHAM.
" T. P. MAY.

(Signed) JA'S FAHEY.
" E. G. GOTTSCHALK.

(Signed) S. MAGNER,
Not. Pub.

A true copy. New Orleans, La., July 9, 1869.
[SEAL.] S. MAGNER,
Not. Pub.

[5-cent stamp.]

37 EXHIBIT B.—*Filed with bill July 10th*, 1869.

CHA'S CASE, REC'R 1ST NATIONAL BANK OF New Orleans,
vs.
G. T. BEAUREGARD & OTHERS. } No. 5931.

Copartnership between G. T. Beauregard and Thomas P. May & Aug. C. Graham, 18th April, 1866.

[5-cent internal-revenue stamp.]

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that this day, the eighteenth of April, in the year of our Lord eighteen hundred and sixty-six, and in the 90th of American Independence, before me, Amédée Ducatel, notary public, duly commissioned and sworn in and for this city and parish of Orleans, therein residing, and in presence of the undersigned witnesses, personally came and appeared M'r Gustave Toutant Beauregard, residing in this city, of the first part, M'r Thomas P. May, also of this city, of the second part, and M'r August C. Graham, residing also in this city, of
38 the third part, which said appearers declared that for and in consideration of the mutual credit and faithful confidence that each of them has reposed in the others, and with a view to their mutual advantage and benefit, they have entered into the following articles of agreement:

ARTICLE 1ST. Gustave Toutant Beauregard shall obtain in his name, but for the joint account of the appearers, the lease of the "New Orleans and Carrollton Railroad"; he shall take charge, conduct, manage, and direct the undertaking at a salary of five thousand dollars per annum, payable monthly at the rate of four hundred and sixteen dollars sixty-six cents and two-thirds per month, promising and binding himself to do his best endeavors, to the utmost of his skill and ability, for their mutual advantage; and also he shall have the right to select and appoint his assistants, with proper salaries.

ARTICLE 2D. The said Thomas P. May and Augustus C. Graham shall furnish the amount of money necessary to carry out the enterprise, which amount shall not exceed one hundred and fifty thousand dollars for each of them, making an aggregate amount of three hundred

39 thousand dollars. The said T. P. May and A. C. Graham shall be reimbursed in capital and interest at the rate of eight per cent. per annum from the annual net profit of the enterprise.

ARTICLE 3RD. After the payment of said capital and interest as aforesaid, the annual net profits, gains, and increase as shall arise shall be equally divided between the said appearers, share and share alike, and also all losses as shall happen by bad debts or otherwise shall be paid and borne equally between them.

ARTICLE 4TH. The said T. P. May and A. C. Graham promise and bind themselves to pay the above sum of one hundred and fifty thousand dollars, each of them, in manner following, to wit: twenty thousand dollars (each of them) immediately after the signing of the lease by the "New Orleans and Carrollton Railroad Company"; then twenty thousand dollars (each of them) per month during the next four succeeding months; then ten thousand dollars per month, should they be required by the lessee, G. T. Beauregard, until final payment of the said sum of one hundred and fifty thousand dollars by each of them.

40 ARTICLE 5TH. There shall be kept just and true books of accounts, wherein shall be entered as well all the money received and expended in and about the said enterprise, as also all commodities and merchandise bought by reason and on account of the present copartnership between the appearers, and all other matters and things in anywise belonging or appertaining thereto, so that either of them at any time have free access thereto.

ARTICLE 6TH. On the first of each month a statement of amounts received and expended during the preceding month shall be furnished to the said Thomas P. May and A. C. Graham by said G. T. Beauregard, who will make his deposits in the First National Bank in this city.

ARTICLE 7TH. This co-partnership shall continue from the date of the lease by the said "New Orleans and Carrollton Railroad Company" to the said G. T. Beauregard for and during and to the full end and term of twenty-five years next ensuing.

ARTICLE 8TH. In case any of the said copartners shall happen to decease before the expiration of the said term of twenty-five years the present copartnership shall continue between the surviving copartners and the heirs or assigns of the deceased under the same

41 charges, clauses, and conditions as above set forth.

And the said parties hereby bind themselves, their heirs, executors, and administrators for the performance of all and every of the above agreements.

Thus done, passed, and concluded in my office at New Orleans, the day, month, and year first above written in presence of Messrs. Henry Ducatel, and André Pélamie, competent witnesses, who have signed these presents, together with the said appearers and me, the notary.

(Signed) T. P. MAY.
" A. C. GRAHAM.
" G. T. BEAUREGARD.
" HENRY DUCATEL.
" A. PELAUNE.
" AMÉDÉE DUCATEL, *N. P.*

A true copy from the original.

[SEAL.] (Signed) AMÉDÉE DUCATEL, *N. P.*

EXHIBIT C.—*Filed with bill July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, RECEIVER 1ST NATIONAL BANK of New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931. 5th May, 1866.

42 Sale of property by W'm C. Raymond to G. T. Beauregard, T. P. May, and A. C. Graham.

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans.

[5-cent internal-revenue stamp.]

Be it known, that on this fifth day of May, in the year of our Lord one thousand eight hundred and sixty-six, and the 90th of the Independence of the United States of America, before me, Amédée Ducatel, notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. W'm C. Raymond, residing in this city, who declared that for the consideration and on the terms and conditions hereinafter expressed, he does by these presents grant, bargain, and sell from this day and forever, under all lawful warranty, and with substitution and subrogation to all his rights and actions of warranty against all vendors or former proprietors, unto Messrs. Gustave Toutant Beauregard, Thomas P. May, and Augustus C. Graham, residing also in this city, here
43 present and accepting, purchasing for themselves, their heirs and assigns in the proportion of one undivided third each, and acknowledging delivery and due possession thereof, a certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging or in any wise appertaining, situated in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades and Apollo streets, and containing twenty-four lots, numbered from one to twenty-four inclusive, in conformity with a lithographic plan deposited in the office of A. Mazurean, notary in this city, being the same acquired by the said W'm C. Raymond from Karl Kohn, as per act executed before W. Shannon, notary in this city, dated the sixteenth day of May, eighteen hundred and sixty-two, and registered in the conveyance office of the parish of Jefferson, book "H," folio 574.

To have and to hold the said square of ground unto the said purchasers, their heirs and assigns, for their only proper use and behoof forever.

From the receipts exhibited to me, notary, all the taxes on said square of ground have been paid up to the year eighteen hundred
44 and sixty-five inclusive.

This sale is made and accepted for and in consideration of the price and sum of twelve thousand five hundred dollars, in deduction of which that of four thousand one hundred sixty-six cents and two-thirds by the said purchasers has been in hand well and truly paid in ready current money, the receipt whereof is hereby acknowledged and acquit-

tance therefor granted the said W'm C. Raymond, vendor. And for the balance the said purchasers have furnished two promissory notes by them subscribed to the order of and endorsed by themselves, dated this day, for the sum of four thousand one hundred and sixty-six dollars sixty-six cents and two-thirds each, bearing interest at the rate of eight per centum per annum from date until final payment, and payable respectively one and two years after date. Which notes, marked and signed ne varietur by me, the notary undersigned, to be herewith identified, were handed over and delivered to the said W'm C. Raymond, who acknowledges said delivery.

Now, in order to secure the full and punctual payment of said notes at maturity, together with the payment of all interest and costs, even lawyers' fees at the rate of five per cent. on the amount of
45 said notes in case of judiciary proceedings, the said purchasers do hereby affect, mortgage, and hypothecate specially the above square of ground in favor of all bearers of the said notes; promising and binding themselves not to sell, alienate, mortgage or encumber the said square of ground to the prejudice of the present act.

By reference to the annexed certificate of the recorder of mortgages in and for the parish of Jefferson, it will appear that there is no mortgage whatsoever standing in the name of the present vendor and recorded against said square of ground, but that it is subject to the drainage tax.

The said vendor declares that he is tutor of two minor children, but that having furnished a special mortgage in their favor by act before Thomas Layton, notary, in this city, dated the twenty-ninth day of March, eighteen hundred and fifty-three, there exist no general and tacit mortgage against him.

And now personally appeared Mistress Mary Ann Laidlaw, wife, of lawful age, of the said W'm C. Raymond, who, after the undersigned notary had explained to her verbally the nature and purport of the foregoing act of sale from her said husband to the said Beauregard,
46 May, and Graham, declared that she is desirous of releasing in favor of the said purchasers the square of ground hereinbefore sold, from the matrimonial, dotal, paraphernal, and other rights, and from all claims, mortgages, or privileges to which she may be entitled, whether by virtue of her marriage with the said W'm C. Raymond or otherwise.

Whereupon the undersigned notary did explained verbally to the said Mistress Raymond, out of the presence of her said husband, the nature of her rights (which are here detailed, to wit: The wife has a legal mortgage on the property of her husband in the following cases: 1st. For the restitution of her dowry, and for the reinvestment of the dotal property sold by her husband, and which she brought in marriage, reckoning from the celebration of the marriage. 2d. For the restitution and reinvestment of the dotal property which came to her after marriage, either by succession or donation, from the day the succession was opened or the donation perfected. 3d. For the reimbursing the amount of her paraphernal property alienated by her and received by her husband or otherwise disposed of for his individual interest. 4th. To indemnify her for debts which she may have contracted with her husband. And,
47 5th. For the donations which may have been made to her by her husband on account of their marriage); and that by renouncing said rights on the square of ground hereinbefore sold she would deprive herself irrevocably of all recourse thereon.

And the said M'r's Raymond did thereupon declare to me, notary, that

she fully understood the nature and extent of her said rights on the property of her said husband, and that she nevertheless did persist in her intention of renouncing the same in favor of the said purchasers on the property hereinbefore sold.

And the said W'm C. Raymond, being now present, assisting and authorizing his said wife in the execution of these presents and consenting thereto, she, the said M'r's Raymond, did again declare that she did and do so hereby make a formal renunciation and relinquishment of all her said rights and mortgages on the property hereinbefore described & sold, in favor of the said Beauregard, May, & Graham, binding herself and her heirs at all times to sustain and acknowledge the validity of this renunciation.

Thus done and passed in my office, at the city of New Orleans
48 aforesaid, in the presence of Henry Ducatel & André Pelaune, both of this city, competent witnesses, who hereunto sign their names with the said parties and me the said notary.

(Signed)	M. A. L. RAYMOND.
(")	G. T. BEAUREGARD.
(")	T. P. MAY.
(")	A. C. GRAHAM.
(")	W. C. RAYMOND.
(")	A. PELAUNE.
(")	HENRY DUCATEL.
(")	ARMEDEE DUCATEL, *N. P.*

A true copy from the original.
[SEAL.] (Signed) AMEDEE DUCATEL, *N. P.*

EXHIBIT D.—*Filed with bill, July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, RECEIVER 1ST NAT'L BANK, NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931. 30th April, 1866.

Sale of property by Sam'l Arthur Kohn to G. T. Beauregard, Th. P. May, & A. C. Graham.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

49 Be it remembered that on this thirtieth day of the month of April, one thousand eight hundred and sixty-six, and the 90th year of the Independence of the United States of America, before me, Amedee Ducatel, a notary public in and for the city and parish of New Orleans, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared M'r Samuel Arthur Kohn, residing in this city, which said appearer declared that for the consideration and on the terms and conditions hereinafter expressed, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over with all legal warranty from this day and forever, and with substitution and subrogation to all his rights and actions of warranty against all vendors or former proprietors unto Mess'rs Gustave Toutant Beauregard, Thomas P. May, and Augustus C. Graham, residing in this city, here present and accepting, purchasing for

themselves, their heirs and assigns in the proportion of one-third each, and acknowledging delivery and due possession thereof, a certain square of ground, with all the rights, privileges, and appurtenances
50 thereunto belonging or in anywise appertaining, situated in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-six on a lithographic plan deposited in the office of Adolphe Mazureau, notary in this city. The said square comprised between Nayades, Apollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive, being the same acquired by the said Samuel Arthur Kohn from the estate of Samuel Kohn as per act executed before Adolphe Mazureau, notary, dated the twenty-sixth day of May, eighteen hundred and fifty-four, registered in the conveyances office of the parish of Jefferson, Book E, folio 224.

All the taxes on said lot or square of ground have been paid up to the year eighteen hundred and sixty-four, inclusive, as appears from the receipts exhibited to me, notary undersigned; and the said vendor, Samuel Arthur Kohn, promises and binds himself to pay those for the year now last past (1865) whenever required so to do.

And by reference to the annexed certificate of the recorder of mortgages in and for the parish of Jefferson, it will appear that there
51 is no mortgage whatsoever standing in the name of the present vendor and recorded against said square of ground. The same certificate shows that the said square of ground is subject to the drainage tax.

To have and to hold the said square of ground unto the said Beauregard, May, and Graham, their heirs and assigns, to their proper use and behoof forever. And the said Samuel Arthur Kohn, for himself, his heirs, or assigns, to the said Beauregard, May, & Graham, their heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever, by these presents; and the said vendor does moreover subrogate the said purchasers to all the rights and actions of warranty which he has or may have against his own vendor, or against the vendors of his vendor, fully authorizing the said purchasers to exercise the said rights and actions in the same manner as he himself might or could have done.

This sale is made and accepted for and in consideration of the total price and sum of eight thousand dollars, in deduction of which
52 that of two thousand six hundred and sixty-six dollars sixty-six cents and two-thirds by the said purchasers has been in hand well and truly paid in ready current money, the receipt whereof is hereby acknowledged and acquittance therefor granted by the said S. A. Kohn, vendor. And for the balance the said purchasers have furnished two promissory notes by them subscribed to the order of and endorsed by themselves, dated this day, for the sum of two thousand six hundred and sixty-six dollars sixty six cents and two-thirds each, bearing interest at the rate of eight per cent. per annum from date until payment, and payable respectively one and two years after date. Which notes marked and signed ne varietur by me, the notary undersigned, to be herewith identified, were handed over and delivered to the said vendor, who acknowledges said delivery.

Now, in order to secure the full and punctual payment of said notes at maturity, together with the payment of all interest and costs, even lawyers' fees, at the rate of five per cent. on the amount of said notes in case of judiciary proceedings, the said purchasers do hereby affect, mortgage, and specially the above square of ground, in favor of

53 all bearers of the said notes; promising not to sell, alienate, mortgage, or encumber the said square of ground to the prejudice of this act.

Thus done and passed, in my office, at the said city of New Orleans, in the presence of Mess'rs Henry Ducatel and André Pelaune, witnesses of lawful age and domiciliated in this city, who hereunto signed their names, together with the said parties, and me the said notary, after the reading of the act.

(Signed)	G. T. BEAUREGARD.
(Signed)	T. P. MAY.
(Signed)	A. C. GRAHAM.
(Signed)	ARTHUR KOHN.
(Signed)	HENRY DUCATEL.
(Signed)	A. PELAUNE.
(Signed)	AMÉDÉE DUCATEL, *N. P.*

A true copy from the original.

AMÉDÉE DUCATEL, *N. P.*

EXHIBIT E.—*Filed with bill July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931. 29th June, 1866.

Sale of property New Orleans & Carrollton Railroad Company to G. T. Beauregard, lessee.

54 STATE OF LOUISIANA.
City of New Orleans:

Be it known that on this twenty-ninth day of June, eighteen hundred and sixty-six, before me, Selim Magner, a notary public duly commissioned and sworn in and for the parish of Orleans, personally came and appeared George Currie Duncan, esquire, president of the New Orleans and Carrollton Railroad Company, and herein acting by virtue of a resolution of the board of directors of said company, adopted at their sitting of the eighteenth of December, 1865, a true copy of which is annexed to an act of deposit passed before me on the fourteenth of February, 1866, who declared that, for the consideration hereinafter set forth, he does in his said quality by these presents grant, bargain, and sell, with all legal warranties and with subrogation to all the rights and actions in warranty of said New Orleans and Carrollton Railroad Company against all preceeding vendors or possessors, unto Gustave Toutant Beauregard, esquire, of this city, lessee of the New Orleans and Carrollton Railroad, herein represented by his attorney in fact, Thomas P. May, esquire, present & accepting for said Beauregard, lessee
55 aforesaid, his heirs & assigns, and acknowledging possession thereof, a certain piece or portion of land situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle bounded by Levee and First streets and Carrollton avenue, and measuring more or less five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches one and half lines on First street, and seven hundred and ninety-eight feet four inches in front on Levee

street; which measures, however, are not guaranteed by said company, present vendors; he, said May, for said Beauregard, accepting said property subject to such measure as the same may contain or have on each of said streets, together with all the buildings and improvements thereon and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging. Which portion of ground forms part of certain property acquired by the present vendors by purchase from L. Milandon, the Canal Bank, Samuel Kohn, & John Slidell, by act passed before G. R. Stringer, late notary, on 4th June, 1833.

To have and to hold the said property unto the said Beauregard as lessee aforesaid, his heirs and assigns, forever.

56 It is hereby understood that said New Orleans & Carrollton Railroad Company shall be entitled to all the rents for the presently sold property up to the first of July next.

By reference to the hereunto annexed certificate of the recorder of the parish of Jefferson it will appear that said property is forfeited to the State of Louisiana for taxes of the years 1852 to 1856, inclusive, and 1860, but as the said railroad company is exempt from the payment of taxes up to the present year, by its charter, as the same has also been certified to by H. Peralta, auditor of the State, on a mortgage certificate annexed to a sale to F. Fisher, passed before me, notary, on the 20th of March, 1866, said inscriptions of forfeiture are null and void. And said property stands furthermore encumbered: 1st, by the mortgage granted by said company by act passed before me, notary, on the 29th January, 1857, in favor of Louis Flarval Générés, on said property and other, to secure payment of one hundred and fifty thousand dollars, amount of one hundred and fifty bonds of one thousand dollars each, dated

57 15th January, 1857, payable ten years after date, with eight per cent. interest per annum, payable semi-annually, for which coupons were granted; 3d, and by the privilege which might result from the registry of a lease dated 24th October, 1865, by which it appears that said railroad company leased to P. Williams the buildings known as the "Carrollton Hotel" for two years, to commence from the first of November, 1865, and to terminate on the thirty-first of October, 1867, subject to which lease this act is accepted.

This sale is made for and in consideration of the price and sum of twenty-six thousand dollars, which the said Duncan, president aforesaid, hereby acknowledges to have received in manner following, to wit: Eight thousand six hundred and sixty-six dollars sixty-six and two-thirds cents in ready money, for which he grants acquittance, and for the balance the said attorney in fact has subscribed for and in the name of said G. T. Beauregard, lessee, two several promissory notes to the order of and endorsed by said May and Augustus C. Graham, dated this day, each for eight thousand and six hundred and sixty-six dollars sixty-six and two-thirds cents, payable respectively at

58 one and two years at the First National Bank of New Orleans, with interest thereon at the rate of seven per cent. per annum from date until maturity, and eight per cent. thereafter until paid, which notes have been duly paraphed, "ne varietur," by me, notary, to identify the same herewith. And in order to secure the payment of said promissory notes in capital and all interest thereon as aforesaid, special mortgage in favor of said railroad company and the future holder or holders of said notes is hereby retained on the property presently sold, the said attorney in fact hereby binding his said constituent not to sell, alienate, or encumber the same to the prejudice of this act.

And the said May furthermore binds his said constituents to keep the

buildings on said property constantly insured against loss by fire to an amount not less than eight thousand dollars, and to transfer the policy of insurance to the said railroad company until the full and final payment of said notes, hereby agreeing that the said railroad company shall have the right to transfer such policy to the future holder or holders of said notes, and in case of failure on the part of said Beauregard to effect such insurance, the holder or holders of said notes shall
59 have the right to do so (should they deem proper to exercise the same), and all premiums of insurance thus paid shall remain secured by the mortgage herein granted.

And to these presents personally came and appeared Richard J. Evans, esquire, of this city, who produced unto me, notary, the above-mentioned one hundred and fifty bonds and coupons thereon, and declared that he does hereby release and discharge the presently sold property from the effects of said mortgage, securing the payment of said bonds, and authorizes the recorder of mortgages for the parish of Jefferson to erase and cancel the same, so far as said property is concerned, and no further. And I, notary, made mention of this partial release on the face of said bonds.

The U. S. internal-revenue stamps of twenty-six dollars on this act are hereto attached.

Done and passed in my office, at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses, who sign these presents with the said appearers, and me, notary, after reading thereof.

(Signed) G. CURRIE DUNCAN, *President.*
(") T. P. MAY.
(") RICHARD J. EVANS.
(") JAMES FAHEY.
(") E. G. GOTTSCHALK.
(") S. MAGNER, *Not. Pub.*

A true copy.
New Orleans, 9th July, 1869.

S. MAGNER, *Not. Pub.*

[5 cent rev. stamp.]

60 EXHIBIT F.—*Filed with the bill, July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, RECEIVER 1ST NAT'L BANK NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931. 15th January, 1867.

Sale of property, New Orleans and Carrollton Railroad Company to G. T. Beauregard, lessee.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

Be it known that on this fifteenth day of January, eighteen hundred and sixty-seven, before me, Selim Magner, a notary public in and for this city and the parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared George Currie Duncan, esquire, of this city, herein acting in his quality of president of the "New Orleans and Carrollton Rail-

road Company," and moreover by virtue of a resolution of the directors of said company, adopted at their sitting of the sixteenth of November,
61 1866, a certified copy whereof is annexed to an act of sale from said New Orleans and Carrollton Railroad Company to A. J. Fitzpatrick, on the seventeenth of December, 1866, passed before me, notary, who declared that for the consideration hereinafter set forth he does in his said quality, by these presents, grant, bargain, and sell with all legal warranties, and with substitution and subrogation to all the rights and actions in warranty, against all preceeding vendors, or possessors, unto Gustave Toutant Beauregard, esquire, of this city, purchasing as lessee of the "New Orleans and Carrollton Railroad Company," here present, acknowledging possession and accepting in his said capacity for himself and assigns, seven certain lots of grounds, situate in the first district of this city, in the square bounded by S't Charles, Felicity, Apollo, or Carondelet, and Polymnia, designated by the Nos. one, two, three, four, five, six, and seven on a plan deposited in my office as plan No. 116; according to which plan said lots measure as follows, to wit: lot No. one measures thirty-six feet nine inches front on S't Charles street, by a depth of ninety-four feet between parallel lines; lots two, three, four, and
62 five, immediately in the rear of lot No. one, adjoining each other, and measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to S't Charles street, and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Apollo, now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear; and lots six and seven, adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred and twenty feet between parallel lines: together with all and singular the buildings and improvements thereon and appurtenances thereof known as the "Horse-Station," and all the rights, ways, and servitudes thereunto belonging or in anywise appertaining. Which property forms part of certain real estate acquired by said company, as follows, to wit: from P. Plique, f. m. c., per act before the late L. Hermann, notary, on the 18th July, 1846; from James C. Parker, per act before W. Y. Lewis, late notary,
63 on 22d March, 1836; from the sheriff of the parish of Orleans, per act before the late Theodore Tureaud, notary public, on the ninth of February, 1839; and from Pierre Michel, per act before Lucien Hermann, late notary public, on the sixteenth of March, 1847. Said Duncan does hereby bind said company to pay the taxes due or to become due on said property for the year 1866, when collectable.

To have and to hold the said property unto the said purchaser, his heirs and assigns, to their only proper use and behoof forever.

This sale is made for and in consideration of the price and sum of twenty-six thousand dollars, which the said Duncan in his said quality hereby acknowledges to have received in the manner following, to wit, eight thousand six hundred and sixty-six dollars, $66\frac{33}{100}$ in ready money, for which he grants acquittance and discharge, and for the balance of said purchase price the said purchaser has furnished four several promissory notes to the order of and by Thomas P. May, endorsed, dated seventeenth of December, eighteen hundred and sixty-six, each for the sum of four thousand three hundred and thirty-three dollars thir-
64 ty-three and one-third cents, payable respectively, two marked 1 & 2 in one year, and two marked 1 & 2 in two years, at the Canal Bank in this city, with interest thereon at the rate of eight per cent.

per annum from date until final payment at the rate of eight per cent. per annum as a penal clause; which notes have been duly paraphed, ne varietur, by me, notary, to identify the same herewith.

And in order to secure the payment of said promissory notes in capital and all interest thereon as aforesaid, vendor's privilege and special mortgage in favor of said vendor and the future holder or holders of said notes is hereby retained on the property presently sold, the said purchaser hereby binding himself and his heirs not to sell, alienate, or encumber the same to the prejudice of this act.

And the said purchaser furthermore binds himself to keep the buildings on said property constantly insured against the loss by fire, to an amount not less then seventeen thousand five hundred dollars; and to transfer the policy of insurance to the said vendor until the full and final payment of the said note, hereby consenting and agreeing
65 that said vendor shall have the right to transfer such policy to any future holder or holders of the said note, and that in case of failure on the part of the said purchaser to effect such insurance, the holder or holders of the said note shall have the right to do so, and the reinbursement of all sums paid for that purpose shall be secured by the mortgage herein granted; but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage, or injury which may result from the non-insurance of the said buildings.

By reference to the annexed certificate of the recorder of mortgages in and for this parish, it appears that said property stands encumbered in the name of said company, 1st by the draining privilege, of which said purchaser binds himself to pay the balance to become due thereon; 2d by the mortgage granted by said company in favor of L. F. Générés, by act before me, notary, on the 29th January, 1857, to secure one hundred and fifty thousand dollars of bonds and interest thereon. Which mortgage said Duncan binds himself to have cancelled without delay, so far as the presently sold property is concerned, and the undersigned notary shall keep the proceeds of this sale until said property
66 shall be clear of said mortgage.

The U. S. internal revenue stamps of twenty-six dollars are hereto attached.

Thus done and passed in my office, at New Orleans aforesaid, on the day, month, and year first before written, in the presence of Edward G. Gottschalk and James Fahey, competent witnesses residing in this city, who have hereunto signed their names with said parties and me, notary, after reading thereof. (Twenty-two words erased null and void.) Approved.

(Signed) G. CURRIE DUNCAN, *Pres't.*
" G. T. BEAUREGARD, *Lessee.*
" E. G. GOTTSCHALK.
" JA'S FAHEY.
" S. MAGNER, *Not. Pub.*

A true copy.
New Orleans, 9th July, 1869.
[SEAL.] S. MAGNER, *Not. Pub.*

[Five cent int. rev. stamp.]

67 EXHIBIT N.—*Filed with bill July 10th, 1869.*

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD AND OTHERS. } No. 5931. 14th May, 1867.

Assignment by Thomas P. May, to United States of America.

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known, that on this fourteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first, before me, Andrew Hero, jr., a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas P. May, of this city, who declared that in consideration of the sums of money due by him to the
68 United States of America, the exact amount of which is to be ascertained upon an adjustment of his account with said United States, he does by these presents, in part payment of said indebtedness, cede, transfer, assign, and set over with all legal warranties, unto the said United States of America, represented herein by John Jay Knox, special agent of said United States of America, and here present and accepting for the said United States the property, whether real, personal, or mixed, hereinafter mentioned and referred to, viz:

Cash in the First National Bank of New Orleans, three hundred and fifteen thousand seven hundred and seventy-nine dollars	$315,779 00
The steamer Virgin, valued at the sum of seventy-five thousand dollars	75,000 00
Three lots of ground situate at the corner of Canal and Marais streets, together with the buildings thereon, purchased by said May from Geo. Ruleff, by act before Ja's Graham, notary, on the second of August, 1865, which real estate, with the household furniture on the premises, is hereby valued at fifty thousand dollars	50,000 00
Amount carried forward	440,779 00
69 Amount bro't forward	$440,779 00
J. O. Nixon's promissory note, dated April 25th, 1867, made to his own order, for the sum of twenty-five thousand dollars	25,000 00
Fourteen hundred and ten shares of one hundred dollars each in the capital stock of the First National Bank of New Orleans, valued at one hundred and forty-one thousand dollars	141,000 00
A certain plantation, situate in the parish of S't Charles in this State, known as the Payne plantation; the same being the property of said May, although the title thereto is in the name of A. C. Graham, as per	

his act of purchase thereof, passed before A. Mazureau, a notary in this city, on the 6th of February, 1866; said plantation being valued at forty-four thousand dollars 44,000 00

The interest of the said May in and to the Carrollton Railroad Company and the property, stock, and appurtenances thereto belonging; the value of which is estimated at the sum of four hundred and eighty thousand dollars..... 480,000 00

The interest of said May in commission business in this city; which is value' at sixty-six thousand dollars.... 66,000 00

Total estimated value of the property so ceded and transferred, the sum of one million one hundred and ninety-six thousand seven hundred and seventy-nine dollars..... 1,196,779 00

70 And the said Thomas P. May hereby promises and binds himself without unnecessary delay to sign and execute all acts or other instruments of writing that may be necessary to give to the United States of America, or their assigns, full, complete, and valid titles to the property herein transferred.

To have and to hold the real and personal property aforesaid unto the United States of America, or their assigns forever.

And the said May furthermore binds himself personally and as the agent and attorney in fact of the persons interested with him in the property herein referred to and hereby transferred, not to alienate or encumber the same to the prejudice of these presents.

Thus done and passed in my office at New Orleans aforesaid, in the presence of Samuel H. Torrey and James Graham, competent witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) T. P. MAY.
J'NO. JAY KNOX.
SAM'L H. TORREY.
JA'S GRAHAM.
ANDREW HERO, J'R,
Not. Pub.

Registered conveyance office, book 92, fo. 460.
New Orleans, 16th May, 1867.
ROBERT B. STILLE, *Register.*

Registered B. J J, fo. 817. Jefferson Parish.

71 I certify the foregoing copy of the original act, duly stamped as an assignment, on file and of record in my office.
New Orleans, April 24th, 1868.
[SEAL.] (Signed) ANDREW HERO, J'R, *Not. Pub.*

[Five cent int. rev. stamp.]

EXHIBIT H.—*Filed with bill, July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET. AL. } No. 5931. 16th May, 1867.

Transfer of lease, &c., by T. P. May et als. to United States of America.

STATE OF LOUISIANA,
Parish and city of New Orleans:

Be it known that on this sixteenth day of May, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-first, before me, Andrew Hero, j'r, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned
72 personally came and appeared Thomas P. May, of this city, herein acting as well for himself, personally, as in his capacity as the duly authorized agent and attorney in fact of Augustus Clason Graham, formerly of this city but now a resident of the city and State of New York, by virtue of his power of attorney to said May, executed under private signature, dated at said city of New York, on the twenty-ninth day of September, 1866, and annexed for reference to an act of agreement executed between said Augustus Clason Graham and Charles Hodges, before T. O. Stark, a notary in this city, on the twenty-third day of October, 1866, which said May declared in his said several capacities, that for the consideration and on the terms and conditions hereinafter expressed, he does by these presents cede, transfer, assign, and set over unto the United States of America, represented herein by John Jay Knox, the duly appointed and authorized agent of the United States of America, he being here also present, and in his said capacity accepting for the United States of America, and their assigns, and acknowledging delivery and possession thereof. All and singular the right, title, interest, share, property, claim, and demand of every nature
73 and kind whatsoever, of them, the said Thomas P. May and Augustus Clason Graham, and each of them, in and to the New Orleans and Carrollton Railroad the lease and other franchises thereof, and the railroad tracks, rolling stock, engines, cars, live stock, and other appurtenances thereunto belonging or in anywise appertaining; the same having been acquired by the said May and Graham by the provisions of certain articles of copartnership entered into between them and Gustave Toutant Beauregard for the purpose of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, eighteen hundred and sixty-six; by which said act of copartnership the said parties thereto became interested in the proportions of one-third part and interest each in the lease and other franchises of the said railroad, the railroad tracks, engines, cars, stock, and other appurtenances thereof, and which said lease was obtained by the said Beauregard for the joint account of himself and the said May and Graham, as per the act of lease in the premises, passed before S. Magner, a notary in this city, on the twelfth day of April, eighteen hundred and sixty-six; all relative to which will more fully appear by the provisions of

74 the hereinbefore referred to acts of lease and copartnership, to which reference is hereby made. But here the said Thomas P. May declared that although it would appear from the premises that the said Graham was a bona fide owner of one-third part and interest in the lease of said railroad and appurtenances, yet in truth and in fact he, the said May, was the owner of the interest therein which appears in the name of said Graham and the owners with the said Beauregard of the whole of the said lease and appurtenances in the proportions of two-thirds parts and interest for himself, and of one-third part and interest for the said Beauregard.

To have and to hold the said rights, title, and interest, unto the said purchasers, their heirs and assigns, forever.

And the said Thomas P. May, as well for himself individually as in his capacity as agent of the said Augustus Clason Graham, hereby binds himself and his heirs, and also binds the said Augustus Clason Graham and his heirs, to warrant and forever defend the right, title, and interest herein transferred against all legal claims and demands.

The said Thomas P. May, personally as well as in his capacity as agent of said Graham as aforesaid, hereby transfers to the said purchaser all the rights and actions of warranty to which he himself
75 or the said Graham is entitled against all persons or bodies corporate interested or concerned in the premises, subrogating the said purchaser to the said rights and actions, to be by them enjoyed and exercised in the same manner as they might have been by the said copartnership themselves, the said May and Graham, or either of them.

This sale is made for and in consideration of the price and sum of four hundred and eighty thousand dollars; the same being the estimated value of the two-thirds part and interest in said railroad and lease herein transferred; which said consideration is made payable as follows, viz: Whereas the said Thomas P. May is indebted unto the United States of America in the sum of about one million and forty thousand dollars, the precise amount of the said indebtedness to be hereafter determined: Now, in settlement and liquidation of said consideration, the said John Jay Knox, the agent aforesaid, hereby and in his said capacity grants the said Thomas P. May an acquittance and discharge for so much of the said price as may enure to or be received by the United States of America from the proceeds of the sale or other disposition of said interest.

76 This act is executed in confirmation of the act of transfer of the said right, title, and interest in said railroad, and the said lease thereof, and of other property, real and personal, belonging to the said Thomas P. May, passed before the undersigned notary on the fourteenth day of May, one thousand eight hundred and sixty-seven.

Thus done and passed in my office, at New Orleans aforesaid, in the presence of James Graham and George Cenas, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed) T. P. MAY.
(" ") JA'S GRAHAM.
(" ") ANDREW HERO, J'R.
JOHN JAY KNOX.
GEO. CENAS,
Not. Pub.

A true copy of the original act (duly stamped) extant in my notarial record.

New Orleans, July 7th, 1869.

[SEAL.] ANDREW HERO, J'R,
Not. Pub.

[Five cent. int. rev. stamp.]

Register'd Orleans Parish, B. 92, fo. 465.
" Jefferson " B. I J, fo. 819.

77 EXHIBIT G.—*Filed with bill July 10th, 1869.*

(Individual ledger A to M No. 2, fo. 97.)

Dr. G. T. Beauregard, lessee, in acc't with the First National Bank of New Orleans. Cr.

1866.				1866.			
April 20.	To check		150	April 16.	By cash		20,000
" "	"		100	17.	"		495 65
21.	"		50	18.	"		428 95
23.	"		100	19.	"		412 85
24.	"		5,921 30	20.	"		385 55
25.	"		208 33	21.	"		392 35
26.	"		212 99	23.	"		1,161 80
" "	"		967 50	24.	"		435 90
28.	"		150 72	25.	"		414 30
" "	"		886 02	26.	"		1,026 55
30.	"		8,640	27.	"		388 10
May 1.	"		2,716 65	28.	"		378 15
2.	"		460	30.	"		1,325 05
3.	"		1,278 61	May 1.	"		444 85
" "	"		208 33	2.	"		455 25
4.	"		4,032 85	3.	"		591 30
" "	"		1,481 50	4.	"		20,000 00
5.	"		920 25	" "	"		438 50
7.	"		1,251 65	5.	"		539 55
8.	"		150	7.	"		1,187 45
10.	"		32 94	8.	"		509 60
11.	"		97 65	9.	"		425 75
12.	"		682 90	10.	"		383 30
14.	"		522 77	11.	"		363 70
15.	"		124 62	12.	"		442 25
16.	"		65	14.	"		1,022 50
" "	"		285 36	15.	"		488 10
17.	"		46 25	16.	"		681 70
18.	"		4,473 81	17.	"		365 10
" "	"		73 05	18.	"		397 45
19.	"		859 55	19.	"		406 75
21.	"		1,286 21	21.	"		1,429 65
" "	"		100	22.	"		510
22.	"		150	23.	"		417 90
" "	"		55 25	24.	"		385
24.	"		64 97	25.	"		360 80
25.	"		160 05	26.	"		359
26.	"		800 83	28.	"		1,369 70
" "	"		100	29.	"		426 65
78 1866.				1866.			
May 28.	To check		1,000	May 30.	By cash		361 15
29.	"		1,239 39	31.	"		316 70
31.	"		500 00	June 1.	"		358 75
June 1.	"		894 99	2.	"		375 50
2.	"		8,069 68	4.	"		1,368 15
4.	"		306	5.	"		497 10
" "	"		2,084 85	6.	"		411 80
5.	"		622 25	7.	"		499 60
6.	"		879 73	8.	"		408 15
7.	"		1,000 00	9.	"		20,383 65
8.	"		1,971 62	11.	"		1,245 40
" "	"		757 50	12.	"		456 15
9.	"		2,501 13	13.	"		411 30
11.	"		5,076 62	14.	"		384 15
" "	"		200 00				
12.	"		359 07				
			67,330 74	Carr'd to fo. 96			89,124 55

(Individual ledger A to M No. 2, fo. 96.)

G. T. Beauregard, lessee, in account with the First National Bank of New Orleans.

		Am't forward			67,330	74		Am't forward			89,124	55
1866.							1866.					
June	15.	To check			385	26	June	15.	By cash		383	85
	16.	"			322	89		16.	"		361	50
	18.	"			125			18.	"		1,591	15
	19.	"			508	15		19.	"		479	15
	22.	"			1,502			20.	"		416	
	23.	"			120			21.	"		392	95
	25.	"			1,623			22.	"		378	80
	28.	"			1,209	54		23.	"		376	20
	"	"			1,000			25.	"		1,425	30
	29.	"			145			26.			488	75
	30.	"			260	75		27.			388	70
July	2.	"			9,846	70		28.			341	65
	3.	"			2,254	75		29.			384	15
	5.	"			9,554	61		30.			364	85
	6.	"			1,567	05	July	2.			1,407	05
	"	"			464	54		3.			440	75
	7.	"			929	68		5.			1,329	70
	"	"			200			6.			451	85
	9.	"			2,379	07		7.			407	60
	10.	"			1,064	56		9.			998	20
	"	"			408	75		10.			20,443	80
	12.	"			1,200			11.			497	40
	13.	"			1,108	67		12.			387	90
79	1866.						1866.					
	July	13.	To check		90		July	13.	By cash		361	70
	14.	"			2,498	43		14.	"		389	85
	16.	"			480	99		16.	"		1,399	15
	17.	"			208	33		17.	"		459	60
	18.	"			272			18.	"		416	30
	20.	"			307	50		20.	"		679	90
	"	"			100	34		21.	"		319	00
	21.	"			968	75		23.	"		1,189	35
	"	"			215	50		24.	"		422	20
	23.	"			631			25.	"		367	45
	26.	"			100			26.	"		369	80
	"	"			50			27.	"		338	15
	27.	"			1,000			28.	"		317	
	28.	"			1,500			30.	"		994	25
	30.	"			846	59		31.	"		430	05
Aug.	4.	"			11,994	74	Aug.	1.	"		347	90
	"	"			1,309	91		2.	"		385	20
	6.	"			1,007	06		3.	"		278	85
	7.	"			1,909	26		4.	"		541	20
	8.	"			905	45		6.	"		1,418	35
	9.	"			140	50		7.	"		357	05
	10.	"			217	15		8.	"		513	80
	11.	"			1,132	20		9.	"		323	50
	13.	"			800			10.	"		311	70
	15.	"			314	85		11.	"		310	85
	17.	"			1,434	33		13.	"		1,016	75
	18.	"			780			14.	"		342	60
								15.	"		294	20
								16.	"		288	25
								17.	"		271	65
								18.	"		231	35
					136,725	93			Continued fo. 95		138,941	75

(Individual ledger A to M, fo. 95.)

Dr. G. T. Beauregard, lessee, in account with the First National Bank of New Orleans. *Cr.*

1866.		From folio 96			136,725 93		
Aug.	20.	To check			500		
	21.	"			100		
	22.	"			200		
	23.	"			100		
	24.	"			144		
	"	"			1,233 92		
	27.	"			716 77		
	29.	"			212 30		
80	1866.						
	Aug. 31.	To check			179 45		
Sept.	1.	To check			1,692 91		
	3.	"			2,442 03		
	5.	"			100		
	6.	"		153,232 05	8,884 74		
	7.	"		155,536 71	2,304 66		
	8.	"		156,183 06	646 35		
	10.	"		158,783 06	2,600		
	11.	"		158,883 06	100		
	13.	"			200		
	14.	"			1,513 65		
	"	"		160,646 71	50		
	15.	"		180,914 89	20,268 18		
	17.	"		181,587 56	672 67		
	18.	"			3,052 02		
	"	"		184,832 08	192 50		
	19.	"		184,926 58	94 50		
		Balance			5,253 87		
					190,180 45		
Sept.	20.	To check			378		
	21.	"		430 56	52 56		
	22.	"		1,791 16	1,360 60		
	24.	"		2,050 76	259 60		
	26.	"		2,344 54	293 78		
	27.	"		2,424 74	80 20		
	29.	"		4,239 35	1,809 65		
				4,057 93			
Oct.	1.	"		4,423 39	189		
	2.	"		7,337 46	2,914 07		
	3.	"		14,164 33	6,826 87		
	4.	"		15,115 03	950 70		
	5.	"		15,407 91	292 88		
	6.	"			1,652 42		
	"	"		17,251 58	191 25		
	8.	"		18,799 75	1,548 17		
	10.	"		19,065 52	265 77		
	11.	"		19,363 52	300		
	13.	"		20,687 22	1,321 70		
	15.	"		20,960 72	273 50		
	16.	"			91 25		
	"	"		22,232 97	1,181		
					22,232 97		

1866.		From folio 96			138,941 75		
Aug.	20.	By cash			893 95		
	21.	"			346 15		
	22.	"			257 60		
	23.	"			279 65		
	24.	"			259 70		
	25.	"			236 95		
	27.	"			1,009 30		
	28.	"			300 85		
1866.							
Aug.	29.	By cash			269 85		
	30.	"			252 15		
	31.	"			239 05		
Sept.	1.	"			268 45		
	3.	"			1,088 25		
	5.	"			917 40		
	6.	"		145,907 05	346		
	7.	"		146,204 30	297 25		
	8.	"		146,455 95	251 65		
	10.	"		147,118 60	662 65		
	11.	"		147,511 45	392 85		
	12.	"		147,794 90	283 45		
	13.	"			251 30		
	14.	"		148,306 00	259 80		
	15.	"		188,569 70	40,263 70		
	17.	"		189,546 05	976 35		
	18.	"		189,885 05	339		
	19.	"		190,180 45	295 40		
					190,180 45		
Sept.	19.	By balance			5,253 87		
	20.	" cash			286 40		
	21.	"		5,810 07	269 80		
	22.	"		6,072 57	262 50		
	24.	"		6,920 52	847 95		
	25.	"		7,245 67	325 15		
	26.	"		7,491 82	246 15		
	27.	"		7,763 57	271 75		
	28.	"		8,037 07	273 50		
	29.	"		8,292 32	255 25		
Oct.	1.	"		9,[illegible]37 42	995 10		
	2.	"		9,[illegible]23 82	436 40		
	3.	"		10,317 27	593 45		
	4.	"		10,703 37	386 10		
	5.	"		11,113 17	409 80		
	6.	"		11,396 17	283		
				5,855 41			
	8.	"		12,453 22	1,057 05		
	9.	"		12,758 22	305		
	10.	"		13,060 77	302 55		
	11.	"		13,329 67	268 90		
	12.	"		13,609 92	280 25		
	13.	"		13,862 27	252 35		
	15.	"		14,859 12	996 85		
	16.	"		15,169 97	310 85		
	17.	"		15,476 42	306 45		
		Continued fo. 94			15,476 42		

81 (Individual ledger A to M, No. fo. 94.)

DR. *G. T. Beauregard, lessee, in account with the First National Bank of New Orleans.* CR.

1866.					1866.		
	From folio 95		22,232 97		From folio 95		15,476 42
Oct.	18.	To check	100	Oct.	18.	By cash	265 80
	20.	"	24,048 72		19.	"	15,982 37	240 15
	22.	"	25,873 97	1,827 25	20.	"	16,216 92	234 55
	23.	"	525		22.	"	17,093 12	876 20
	"	"	25,500 97	100	23.	"	292 05
	24.	"	25,968 37	467 40	"	"	57,385 17	40,000
	Balance		31,896 65		24.	"	57,641 47	256 30
					25.	"	57,865 02	223 55
			57,865 02					57,865 02
Oct.	26.	To check	86 40	Oct.	25.	By balance	31,896 65
	27.	"	342 40		26.	" cash	215 25
	"	"	3,054 85	2,626 05	27.	"	32,311 65	199 75
	29.	"	11,007 52	7,952 67	29.	"	32,999 55	687 90
	31.	"	11,090 77	83 25	30.	"	34,066 20	1,066 65
Nov.	1.	"	861 66	31.	"	34,296 30	230 10
	"	"	12,563 23	610 80	Nov.	1.	"	34,509 10	212 80
	2.	"	4,195 43	2.	"	34,808 75	299 65
	"	"	22,071 11	5,312 45	3.	"	35,039 00	230 25
	3.	"	2,448 16	5.	"	36,184 80	1,145 80
	"	"	25,019 27	500	6.	"	36,633 80	449
	5.	"	2,571 47	7.	"	36,854 45	220 65
	"	"	29,590 74	2,000	8.	"	37,208 70	354 25
	6.	"	29,973 74	383	9.	"	37,416 00	207 30
	7.	"	30,182 07	208 33	10.	"	37,667 25	251 25
	8.	"	30,456 01	273 94	12.	"	38,351 70	684 45
	9.	"	100 00	13.	"	38,676 60	324 90
	"	"	30,650 51	94 50	14.	"	38,923 05	246 45
	10.	"	631 40	15.	"	39,079 70	156 65
	"	"	1,018 75	16.	"	39,277 65	197 95
	"	"	32,880 51	579 85	17.	"	39,484 55	206 90
	12.	"	33,780 51	900 00	19.	"	40,161 50	676 95
	13.	"	34,409 11	628 60	21.	"	40,613 60	452 10
	14.	"	3,422 15	22.	"	40,820 20	206 60
	"	"	38,093 51	262 25	23.	"	41,001 65	181 45
	16.	"	41,514 76	3,421 25	24.	"	41,193 70	192 05
	17.	"	42,253 32	738 56	27.	"	42,035 15	841 45
	19.	"	1,563 55	28.	"	42,223 00	187 85
	"	"	45,816 87	2,000	30.	"	42,576 15	353 15
							15,667 89	
	22.	"	100	Dec.	1.	"	167 40
	"	"	46,062 12	145 25	3.	"	816 55
	23.	"	46,742 03	679 91	4.	"	43,955 95	395 85
82 Nov.	24.	To check	49,089 79	2,347 76	Dec.	4.	" am't over	43,955 95
	26.	"	49,308 54	218 75				
	27.	"	51 00					
	"	"	50,085 04	725 50				
	28.	"	54,685 04	4,600 00				
	30.	"	2,359					
	"	"	58,244 04	1,200				
Dec.	1.	"	1,877 84					
	3.	"	1,413 75					
	4.	"	8,103 28					
	"	"	69,840 91	202				
			69,840 91		Continued folio 107		43,955 95

(Individual ledger from A to M, fo. 107.)

DR. *G. T. Beauregard, lessee, in account with the First National Bank of New Orleans.* CR.

1866.					1866.				
		From folio 94		69,840 91			From folio 94		43,955 95
Dec.	5.	To check		285 30	Dec.	5.	By cash		3,998 29
	6.	"	70,401 21	275		6.	"	48,310 74	356 50
	7.	"		1,586 86		8.	"	49,952 84	1,642 10
	"	"	72,063 63	75 56		10.	"	51,018 54	1,065 70
	8.	"		1,444 70		11.	"	51,428 54	410
	"	"	73,856 08	347 75		12.	"	51,745 04	316 50
	10.	"	75,881 02	2,024 94		13.	"	51,897 04	152
	11.	"	83,154 68	7,273 66		14.	"	52,111 04	214
	12.	"		385 97		15.	"	52,446 04	335
	"	"	83,979 48	438 83		17.	"	53,003 04	557
	13.	"		51 50		18.	"	53,145 04	142
	"	"	85,230 98	1,200		19.	"	54,685 29	1,540 25
	14.	"		354 18		20.	"	54,797 29	112
	"	"	86,932 36	1,347 20		21.	"	56,574 29	1,777
	15.	"	87,032 36	100		22.	"	56,791 29	217
	17.	"		979 85		24.	"	57,622 79	831 50
	"	"	88,212 21	200		26.	"	58,099 79	477
	18.	"		160		27.	"	58,320 79	221
	"	"	88,566 96	194 75		28.	"	61,788 89	3,468 10
	19.	"	88,766 96	200		29.	"	61,873 89	85
	20.	"		152 95		31.	"	62,449 89	576
	21.	"	89,203 41	283 50				35,719 36	
	22.	"		1,725 72		Balance to ledger 13			35,719 36
	"	"	93,190 18	2,261 05					
	24.	"		268 07					
	"	"	93,769 75	311 50					
	28.	"		2,839 66					
	"	"	97,774 25	1,164 84					
	31	"		338					
	"	"	98,169 25	57					
				98,169 25					98,169 25

83 (Individual ledger A to L No. 3, fo. 76.)

1867.					1867.				
Jan'ry	1.	To balance from ledger 12		35,719 36	Jan'ry	2.	By cash		2,871 96
	2.	" 1 check		100		3.	" "		92
	3.	" 3 "		2,018 47		4.	" "		138
	4.	" 2 "		254 08		5.	" "	3,356 96	255
	5.	" 2 "		7,830 07		7.	" "	4,085 96	729
	"	" 1 "	46,140 48	218 50		9.	" "	6,243 96	2,158
	7.	" 2 "		1,463 75		10.	" "		93
	"	" 1 "	50,644 98	3,040 73		11.	" "		396 65
	9.	" 1 "		5,307 33		12.	" "	6,873 61	140
	"	" 1 "	56 296 94	344 63		14.	" "		737
	10.	" 1 "		93 40		15.	" "		373
	11.	" 2 "		396 65		16.	" "		1,437
	12.	" 1 "		276 97		17.	" "		297
	"	" 3 "	58,040 16	976 20		18.	" "		266
	14.	" 3 "		2,023 80		19.	" "	10,239 61	256
	"	" 1 "		217		21.	" "		596
	16.	" 1 "		8,666 66		22.	" "		238
	"	" 1 "		100		23.	" "		1,813
	18.	" 1 "		100		24.	" "	13,125 61	239
	19.	" 4 "		2,577 34		26.	" "		357 25
	"	" 1 "	71,924 96	200		28.	" "	13,987 86	505
	21.	" 1 "		100		29.	" "		191
	"	" 1 "		126 60		30.	" "		1,244
	22.	" 1 "		479		31.	" "	15,567 86	145
	23.	" 1 "		500	Febr'y	1.	" "	16,810 06	1,242 20
	24.	" 1 "		100		4.	" "		797
	"	" 1 "		189		5.	" "		294
	25.	" 1 "	74,521 51	1,101 95		7.	" "		2,108
	26.	" 4	75,149 01	627 50		8.	" "	20,291 56	282 50
	31.	" 2		2,817 06	By balance				77,177 79
	"	" 1	78,044 17	78 10					
	1.	" 2		861 25					
	"	" 2		1,471 66					
	2.	" 5	89,118 51	8,741 43					
	5.	" 1		1,732 74					
	6.	" 1		330 43					
	7.	" 1		600					
	"	" 1		1,433 09					
	8.	" 3	97,469 35	4,254 58					
				97,469 35					97,469 35

(Individual ledger A to L No. 3, fo. 76.)—Continued.

DR. *G. T. Beauregard, lessee, in account with the First National Bank of New Orleans.* CR.

84

Feb'ry	8.	To balance					77,177 79	Feb'ry	11.	By cash		1,937
	9.	"	1	check			135		12.	" "		335
	11.	"	6	"			12,528 17		13.	" "		192
	"	"	3	"			4,156		14.	" "		236
	12.	"	1	"			89		15.	" "		298
	13.	"	2	"			780 15					
	15.	"	2	"			751 21					
	"	"	1	"			108 64					
							95,725 96			Carr'd over		2,998

(Individual ledger A to L No. 3, fo. 77.)

		Am't forward					95,725 96			Am't forward		2,998
Feb'ry	16.	To 3 checks					1,872 94	Feb'ry	18.	By Cash		799
	18.	"	2	"			285 12		19.	" "		382
	"	"		"		98,415 35	531 33		20.	" "		2,144 70
	19.	"		"			2,343 01		23.	" "	7,104 70	781
	20.	"		"			1,544 20		25.	" "		571
	23.	"		"			200		26.	" "		314
	"	"		"		103,367 06	864 50		27.	" "		198
	25.	"		"			5,574 17		28.	" "	13,475 45	5,287 75
	27.	"		"			306 25	M'ch	1.	" "		2,597 55
	28.	"		"			208 33		2.	" "		176
	"	"		"		112,528 85	3,073 04		4.	" "	18,837 81	2,588 81
M'ch	1.	"		"			1,057 80		5.	" "		434
	2.	"		"			909 13		6.	" "		1,418
	"	"		"			1,677 81		7.	" "	20,997 01	308
	4.	"		"			6,026 15		8.	" "	21,294 84	297 03
	"	"		"		123,319 74	1,110		9.	" "		214
	5.	"		"			7,497 95		11.	" "	22,738 84	1,230
	6.	"		"			300		12.	" "	23,127 34	388 50
	7.	"		"		131,321 29	203 60		13.	" "		1,748 66
	8.	"		"			370		14.	" "	25,242 00	366
	"	"	2	"		131,985 32	294 03		16.	" "	25,377 00	135
	9.	"	2	"			443 62		18.	" "	122,269 99	1,929
	"	"	1	"			353 00		19.	" "		142
	"	"	3	"		138,459 80	5,677 86		"	" "	152,448 00	125,000
	12.	"	1	"			3,433 50		21.	" "		598
	"	"	1	"		144,742 83	2,849 53		22.	" "		303
	13.	"	1	"		145,030 49	287 66		23.	" "		336
	16.	"	1	"			1,290		25.	" "		1,007
	"	"	1	"		147,596 99	1,276 50		26.	" "	156,944 00	2,252
	18.	"	1	"			418 31		27.	" "	157,138 00	194
	"	"		"			400		28.	" "		242
	19.	"		"		148,623 63	208 33		29.	" "		329
	21.	"		"			1,835		30.	" "		268
	22.	"		"			1,791 66	April	1.	" "		1,520 25

85 Dr.

M'ch	22.	To 1 check					888 92	April	2.	By cash		335
	23.	"	5	"			1,571 70		3.	" "		279
	25.	"	1	"		162,572 17	7,861 66		4.	" "		250
	28.	"	2	"		165,427 67	2,755 50					
	29.	"	2	"		166,335 29	907 62					
	30.	"	3	"		169,417 94	3,082 65					
April	1.	"	2	"			1,648					
	"	"	1	"		171,365 94	300					
	2.	"	1	"			971 66					
	3.	"	1	"			89 05					
	"	"	1	"			225					
	5.	"	4	"			1,674 49					
	"	"	1	"		174,850 24	524 10					
										Balance		14,488 99

(Individual ledger A to L No. 3, fo. 78.)

1867.												
April	5.	To balance					14,488 99	Ap ril	6.	By cash		780 39
	6.	"	3	checks			780 30		8.	" "	1,410 30	630
	8.	"	1	"		19,512 49	4,243 20		9.	" "	4,025 20	2,614 90
	9.	"	3	"			8,008 37		10.	" "		1,325
	"	"	1	"		28,352 36	831 50		11.	" "		370

(Individual ledger A to L No. 3, fo. 78.)—Continued.

DR. *G. T. Beauregard, lessee, in account with the First National Bank of New Orleans.* CR.

1867.									
April	10.	To 1 checks				3,493	89		
	11.	" 3	"			4,430	55		
	11.	" 1	"			266	75		
	12.	" 1	"			748	35		
	13.	" 2	"		38,700 23	1,408	33		
	16.	" 1	"			1,431	29		
	17.	" 2	"			749	50		
	"	" 1	"		41,661 81	780	79		
	20.	" 1	"			1,224	57		
	"	" 1	"		43,522 23	635	85		
	22.	" 3	"			1,093	25		
	23.	" 3	"		45,390 48	775			
	25.	" 2	"			3,466			
	26.	" 1	"			424	15		
	27.	" 1	"		49,726 88	446	25		
	29.	" 4	"			6,741	99		
May	2.	" 2	"		60,090 80	3,621	99		
	3.	" 2	"			916	66		
	4.	" 2	"		63,979 52	2,972			
	6.	" 3	"			7,249	80		
	7.	" 1	"			405	17		
	8.	" 2	"		76,134 49	4,500			
	10.	" 2	"		83,569 24	7,434	75		
	11.	" 1	"		85,329 24	1,760			
						85,329	24		
May	11.	To balance				72,008	89		

April	12.	By cash						489	
	15.	" "			6,562 20			353	
	15.	" "						651	
	16.	" "			8,846 70			1,635	50
	17.	" "			9,092 70			244	
	18.	" "						217	
	20.	" "			9,809 70			500	
	23.	" "						2,337	30
	24.	" "			12 687 00			540	
	25.	" "			13 320 35			633	35
		To Balance						72,008	89
								85,326	24

86 EXHIBIT I.—*Filed with bill July* 10, 1869.

U. S. circuit court.

CHA'S CASE, REC'V'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL.
} No. 5931. 21st August, 1867.

Transfers by the United States to Alex. Bonneval, Jos'h Hernandez, and George Binder.

UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans, City of New Orleans:

Be it known that on this twenty-first day of the month of August, in the year of our Lord one thousand eight hundred and sixty-seven, and of the Independence of the United States of America the ninety-second, before me, Gustave Le Gardeur, jun'r, a notary public duly commissioned and sworn in for the parish and city, therein residing, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared M'r William Bell, of the city of Washington,
87 District of Columbia, herein acting, as the duly appointed and qualified special agent of the United States of America, by virtue of the credentials exhibited to me, notary, which said appearer declared in said capacity that for the consideration and upon the terms & conditions hereinafter expressed, he does, by these presents, sell, transfer, set over, and assigns, with full warranty, unto Mess'rs Alexandre Bonneval, Joseph Hernandez, & George Binder, all of this city, they being here also present, accepting and purchasing, in the proportion of one undivided third part each, for themselves, their heirs, and assigns, all and singular the rights, titles, interest, share, claims, & demands of every nature & kind whatever of the said United States of America in and to—

1°. The lease of the New Orleans & Carrollton Railroad, and other franchises thereof, & the railroad, tracks, rolling stock, engines, cars, live stock, and other appurtenances thereunto belonging or in any wise appertaining; 2°. The copartnership entered into between Thomas P. May, Augustus C. Graham, and Gustave Toutant Beauregard for the purpose of conducting the business of the said railroad, by
88 an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand eight hundred & sixty-six, by which said act of copartnership the said parties thereto became interested in the proportion of one-third part and interest each in the lease and other franchises of said railroad, the railroad tracks, engines, cars, stock, and other appurtenances thereof, and which said lease was obtained by the said G. T. Beauregard for the joint account of himself and the said May and Graham, as per act of lease in the premises passed, before S. Magner, a notary in this city, on the twelfth day of April, one thousand eight hundred & sixty-six; 3°. And the real estate hereinafter described, to wit:

I. A certain square of ground, with all the buildings, improvements, rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-six on a lithographic plan deposited in the office of Adolphe Mazureau, a notary in this city. The said square comprised between Nayades, Apollo, Milan, & Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive.

89 II. A certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging or in anywise appertaining, situate in the city of Jefferson, parish of Jefferson, in this State, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, & Apollo streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive, in conformity with a lithographic plan deposited in the office of Adolphe Mazureau, a notary in this city.

III. A certain piece or portion of land situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle, bounded by Levee street, Carrollton avenue, and First street, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred & eleven feet two inches, & one and a half line front on First street, and seven hundred & ninety-eight feet four inches front on Levee street, together with all the buildings and improvements thereon and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging.

90 IV. Seven certain lots of ground, situate in the first district of this city, in the square bounded by S't Charles, Felicity, Apollo, or Carondelet, & Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in the office of S. Magner, a notary in this city, as plan number one hundred and sixteen, according to which plan said lots measure as follows, to wit:

Lot Not No. 1: Thirty-six feet nine inches front on S't Charles street, by a depth of ninety-four feet between parallel lines.

Lots two, three, four, & five, immediately in rear of said lot No. one, adjoin each other, & measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred & fourteen feet one inch on the line nearest to S't Charles street & contiguous to the rear line of lot No. one, about eighty-two feet six inches on the

side nearest to Apollo, now Caro'delet street, and about one hundred and twenty-seven feet nine inches in the rear.

And lots six and seven, adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measure each
91 thirty-one feet eleven inches and five lines front on Polymnia street, by a depth of one hundred & twenty feet between parallel lines.

Together with all and singular the buildings & improvements thereon and appurtenances thereof known as the "Horse Station," and all the rights, ways, servitudes, privileges, and advantages thereunto belonging or in anywise appertaining.

Which said real estate was acquired for the use and account of the aforesaid copartnership, as the books thereof will show, by four different purchases, to wit:

One from S. A. Kohn, by act passed before A. Ducatel, a notary in this city, on the thirtieth day of April, one thousand eight and sixty-six.

Another from W'm C. Raymond, by act passed before the same notary on the fifth day of May, one thousand eight hundred and sixty-six

The third from the New Orleans and Carrollton Railroad Company. by act passed before S. Magner, a notary in this city, on the twenty, ninth of June, one thousand eight hundred and sixty-six.

92 And the fourth and last from the same company, by act passed before the same notary, on the fifteenth day of January, one thousand eight hundred and sixty-seven.

To have & to hold the hereinabove conveyed right, title, interest, share, and demand of the United States in and to the above-described property, unto the said Alexandre Bonnavel, Joseph Hernandez, and George Binver, their heirs and assigns forever.

The United States are the owners of the hereinabove-conveyed right, title, interest, share, and demand in and to the above-described property, which right, title, interest, share, and demand embrace, cover, and amount to two-thirds of the whole, for having acquired the same from Thomas P. May & Augustus C. Graham, by act passed before Andrew Hero, jr., a notary in this city, on the sixteenth day of May, one thousand eight hundred and sixty-seven.

This sale is made and accepted for and in consideration of the price and sum of two hundred & eighty-eight thousand dollars, for the two-thirds part or interest herein transferred in the above-described property, payable as follows, to wit: one hundred thousand dol-
93 lars cash, one thousand dollars in three months, and eighty-eight thousand dollars in six months from the twentieth instant, when this contract was closed between the parties.

Wherefore the said Alexandre Bonneval, Joseph Hernandez, and George Binder have presently and at the sight of the notary & witnesses undersigned, paid cash in United States currency, the sum of one hundred thousand dollars, to the said William Bell, who in his aforesaid capacity acknowledges the receipt thereof and grants full and ample acquittance for the same.

And for the balance of the price, to wit, one hundred & eighty-eight thousand dollars, the said purchasers have furnished two several promissory notes, dated the twentieth instant, made and subscribed by them to the order of and endorsed by Mess'r's F. A. Ducros, L. E. Lemarie, and John Dolhonde, and made payable at the office of the assistant treasurer of the United States in this city, one for the sum of one hundred thousand dollars at three months, and the other for the sum of

eighty-eight thousand dollars at six months after date, which
94 said notes, after being signed "ne varietur" by the undersigned notary, to identify them herewith, were handed over & delivered to the said William Bell, who in his said capacity acknowledges the receipt thereof.

It is well understood that to secure the payment of the said two notes the United States expressly retain the vendor's privilege as granted by the laws of Louisiana.

It is also well understood, covenanted, and agreed that all the liabilities due and owing by said May and Graham, as lessees and copartners aforesaid, for account of the aforesaid road, as per the annexed schedule will appear, shall and will be, and the same are hereby, assumed by the purchasers.

It is further understood, covenanted, and agreed that the United States shall and will at all times protect the purchasers against, and save them harmless from, any claim which might at any time be set up against them personally, or against the aforesaid copartnership, or the property, rights, & effects thereof, by or in the name & for the use of the First National Bank of New Orleans, or assigns, for the recovery of or in reference to an overdraft of seventy-two thousand & nine dollars & nine cents, and a promissory note for forty thousand dollars, in
95 all one hundred and twelve thousand & nine dollars & nine cents, which apparently stand to the debit of G. T. Beauregard, as lessee of the New Orleans and Carrollton Railroad, but which in truth and reality are exclusively due & owing to said bank by the said Thomas P. May. And for the better protection of said purchasers the government, through its agent aforesaid, agrees to and does hereby assume the payment of said indebtedness of one hundred & twelve thousand & nine dollars and nine cents to the said Frist National Bank of New Orleans.

And whereas a certain document, purporting to be a transfer of rights by Augustus C. Graham to the Fourth National Bank of New York, was signed, sealed, and delivered by the said A. C. Graham on the eighth day of May, one thousand eight hundred and sixty-seven, and subsequently, to wit, on the fifteenth day of May, one thousand eight hundred & sixty-seven, was registered in book I J, folio 812, of the office of conveyances in and for the parish of Jefferson, in this State:

Now, therefore, and although the parties hereto refuse to acknowledge, but on the contrary stren'ously deny and contest, the legality, validity, & effect of said document, yet it is expressly agreed by and between said parties that the Government of the United States shall and
96 will at all times warrant and protect the purchasers herein against the said document and the effects thereof; & for the better protection and safety of the purchasers it is further covenanted and agreed that the note for eighty-eight thousand dollars, hereinabove furnished, shall not be disposed of nor payment thereof demanded until the aforesaid document, and the registration thereof in the conveyance office, shall have been annulled, set aside, and cancelled.

And in furtherance of that agreement the said note of eighty-eight thousand dollars was handed over to the notary undersigned, who endorsed thereon the said agreement and immediately returned the note to the said William Bell.

And to these presents personally came and intervened Stephen Richard Proctor, esq're, of this city, and herein acting in behalf & as the duly-authorized agent of G. T. Beauregard, esq're, by virtue of an act of procuration passed before A. Ducatel, a notary in this city, on the sixth day of August, one thousand eight hundred and sixty-seven; which

said appearer declared that he does by these presents accept notice of the foregoing transfer in the name and as agent aforesaid.

97 And also to these presents personally came and intervened Samuel H. Torrey, esq're, of this city, who declared that, as the attorney of the United States for the district of Louisiana, he has examined the present act and approves it; and the said district attorney further certifies that he had examined the instructions given to the said William Bell; that by these instructions he is fully authorized to enter into and execute the present contract, and that said contract has been approved by Governor Flanders, and M'r John S. Walton, assistant treasurer of the United States in this city.

The United States being the sellers, the internal revenue stamps are not required.

Thus done and passed at New Orleans, in my office, on the day, month, & year aforesaid, in the presence of Mess'rs Gustave Le Gardeur, sen'r, and Armand Pitot, jun'r, competent witnesses, who have signed with the parties and me, notary, after reading the whole.

(Original signed) W'M BELL, *Special Agent.*
(" ") ALEX. BOUNEVAL.
(" ") I. HERNANDEZ.
(" ") GEO. BINDER.
(" ") SAM'L H. TORREY, *U. S. Att'y.*

(Signed) G. T. BEAUREGARD,
P'r pro. S. RICH'D PROCTOR.
(") A. PITOT, J'R.
(") G. LE GARDEUR.
(") G. LE GARDEUR, J'R, *Not. Pub.*

98 *Schedule of debts and bills payable referred to.*

4 notes for $4,333.33 each, given for the horse station stable, and payable 20th Dec'r, 1867, and 20th Dec'r, 1868, with 8% interest		19,413 31
1 note for $4,166.66, given for the square corner of Napoleon and S't Charles street, and payable 8th May, 1868, with 8% interest		4,833 32
6 notes, given to D'r Elliott for 102 mules, payable at different dates within eight months, with interest		23,340 90
Amount due the Carrollton R'lr'd Company for old rolling-stock sold by the lessee, and to be accounted for by them		10,000 00
2 notes of $8,666.66 each, given for the hotel at Carrollton, and payable 2d June, 1867, and 2d June, 1868, with interest amounting to	$19,413 32	
1 note, $2,666.66, given for square of ground near Napoleon avenue, & payable 2d of May, 1868, with interest	3,091 10	
		22,504 42
Pay rolls for month of July		10,521 17
Office rent for July	$125	
Railroad rent last half of July	854 16	
		979 16
U. S. tax on July receipts	$490 57	
P. McKinny	40	
		530 57

Steven & Seymour, $20; Stark, Stauffer & Co., $94.35....	114 35
Hall, Young & Co., 66.92; McDuff & Co., 4,119.10; Hill & Veazie, 24.40	4,210 42
To be forwarded.....	$96,447 62
99 Forwarded.....	96,447 62
Geddes & Shakespere, 11.69; Kearney, Blois & Co., $56.00; H. Perry, 2.00.....	69 69
Horter, Peterson & Fenner, 24.05; G. N. Morrison, 32.98; F. Fischer, 156.77	273 80
N. O. H. R. R. Co., $414.85; Jno. Rooney, $1,000; I. C. Davey, $1,324.90.....	2,739 75
Taylor & Co., $1,599.55; Bridge & Son, $45; Page & Co., $362.32	2,006 92
I. B. Slawson, $1,400.00; Jno. Stevenson, $805.00; I. R. Turck, 100.00.....	2,305 00
D'r Joseph Elliott, mules	9,000 00
Amount received for old rolling-stock sold since last statement of liabilities furnished, and increasing the amount received for rolling-stock sold, to 20,009.80.....	10,009 80
	$122,852 58
Amount required to complete the road estimated	40,000 00
	162,852 58

I certify that the above statement is correct.

(Signed) S. RICH'D PROCTOR, *Treas'r.*

" P. McBRIDE, *Bookkeeper.*

A true copy. (One word erased null.)
New Orleans, July 8th, 1869.
[SEAL.] G. LE GARDEUR, J'R, *Not. Pub.*

[5-cent int. rev. stamp.]

100 EXHIBIT J.—*Filed with bill July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

Articles of sale of the Carrollton Railroad by the United States to Bonneval et al.

(Copy.)

This agreement, made and concluded this thirty-first day of October, A. D. one thousand eight hundred and sixty-seven, by and between Edward Jordan, Solicitor of the Treasury of the United States, acting with the approval of the Secretary of the Treasury for and on behalf

of the United States, of the first part, and Alexandre Bonneval, Joseph Hernandez, and George Binder, of the city of New Orleans, parish of Orleans, and State of Louisiana, of the second part, witnesseth:

That whereas an act was passed before Gustave Le Gardeur, j'r, a notary public in the city of New Orleans, bearing date the 21st day of August, 1867, whereby William Bell, a special agent of the Treas-
101 ury Department, undertook to convey to the said Alexandre Bonneval, Joseph Hernandez, and Georges Binder all the rights, titles, interest, shares, claims, and demands of the United States in and to a certain lease of the New Orleans and Carrollton Railroad, and the copartnership entered into between Thomas P. May, Augustus C. Granam, and Gustave Toutant Beauregard, for the purpose of conducting the business of said railroad, together with certain real estate acquired, for the use and account of said copartnersbip, being the interest in said property which was acquired by the United States from Thomas P. May and Augustus C. Graham by act passed before Andrew Hero, j'r, a notary in the city of New Orleans, on the 16th day of May, 1867;

And whereas the terms and conditions set forth in said act dated August 21st, 1867, do not meet the approval of the Secretary of the Treasury, and are not in accordance with the proposals made by said Bonneval, Hernandez, and Binder on the 19th day of August, 1869, for the purchase of said property, and accepted by the said William Bell, special agent, on the 20th day of August, 1867;

And whereas it is also considered that the interest of the United States in said property was not passed to said parties by said act passed before G. Le Gardeur, j'r, notary public, on the 21st day
102 of August, 1867; and whereas the said Edward Jordan, Solicitor of the Treasury, in pursuance of authority conferred upon him by law, has executed a conveyance of the interest of the United States in said property to said Bonneval, Hernandez, and Binder, bearing even date herewith, as by reference thereto will more fully and at large appear:

Now, therefore, it is mutually understood and agreed between the parties hereto of the first and second parts that the said last-mentioned conveyance in connection with this agreement shall be taken and accepted by said parties in place and instead of said act of conveyance of Aug't 21st, 1867, and that any force and validity which said act may have shall cease and determine upon the execution hereof.

It is further mutually understood and agreed, that the sale of said property was made for and in consideration of the price and sum of two hundred and eighty-eight thousand dollars, payable as follows, to wit, one hundred thousand dollars in cash, one hundred thousand dollars in three months, and eighty-eight thousand dollars in six months, from the twentieth day of August, 1857, when the contract was closed between the parties, and that the said Alexandre Bonneval, Joseph Her-
103 nandez and Georges Binder, on the 21st day of August, 1867, in presence of G. Le Gardeur, jr., notary, paid cash in United States currency the sum of one hundred thousand dollars to the said William Bell, special agent, on behalf of the United States, and for the balance of the price, to wit, one hundred and eighty-eight thousand dollars, the said parties at the same time made two several promissory notes, dated August 20th, 1867, payable to the order of F. A. Ducras, L. E. Lemarie and John Dolhonde, at the office of the assistant treasurer of the United States at New Orleans, and endorsed by said payees, one for the sum of one hundred thousand dollars at three months, and the other for the sum of eighty-eight thousand dollars at six months after date, which

said notes were delivered to the said William Bell, special agent, as aforesaid.

It is also understood that, to secure the payment of the said two notes' the United States expressly retain the vendor's privilege as granted by the laws of Louisiana.

And it is also understood, covenanted and agreed that all the liabilities due and owing by said May and Graham, as les'ees and copartners aforesaid, for account of the aforesaid road, as per the annexed
104 schedule will appear, shall and will be, and the same are hereby, assumed by the purchasers.

It is further understood, covenanted, and agreed, that the United States shall and will at all times protect the purchasers against and save them harmless from any claim which may at any time be set up against them personally or against the said copartnership, or the property, rights, and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or its assigns, for the recovery of or in reference to an overdraft of seventy-two thousand and nine dollars and nine cents, and a promissory note for forty thousand dollars, in all one hundred and twelve thousand and nine dollars and nine cents, which apparently stand to the debit of G. T. Beauregard, as lessee of the New Orleans and Carrollton Railroad, but which in truth and reality are exclusively due and owing to said bank by the said Thomas P. May.

And whereas a certain document, purporting to be a transfer of rights by Augustus C. Graham to the Fourth National Bank of New York, was signed, seal' and delivered by the said A. C. Graham, on
105 the eighth day of May, one thousand eight hundred and sixty-seven, and subsequently, to wit, on the 15th day of May, 1867, was registered in book IJ, folio 812, of the office of conveyances, in and for the parish of Jefferson, in the State of Louisiana.

Now, therefore, and although the parties hereto refuse to acknowledge, but, on the contrary, deny and contest the legality, validity and effect of said document, yet it is expressly agreed by and between said parties that the United States shall and will, at all times, protect the purchasers against and save them harmless from the said document and the effects thereof.

And whereas the act passed before G. Le Gardeur, j'r, notary, upon the 21st of August, 1867, herein above mentioned, contained a clause whereby, for the better protection and safety of the purchasers, it was covenanted and agreed that the aforesaid note for eighty-eight thousand dollars made by said purchasers should not be disposed of, nor payment thereof demanded, until the aforesaid document and the registration thereof in the conveyance office shall have been annulled, set aside and cancelled, and in furtherance of said agreement the said notary public endorsed said agreement on said note.

106 Now, therefore, it is understood and agreed between the parties hereto that notwithstanding the said agreement and the endorsement thereof on said note, the said note shall be demandable and payable at the maturity thereof in the same manner as if said agreement and endorsement had never been made, and that said endorsement shall be cancelled.

And the said parties of the second part further agree that they will procure the assent of the endorsers of said notes to such cancellation, and to whatever changes are wrought or contemplated in their obligations and liabilities by this agreement.

In witness whereof the said Edward Jordan, solicitor of the treasury as aforesaid, has hereunto set his hand and affixed his official seal, and

the said Alexandre Bonneval, Joseph Hernandez, and Georges Binder have set their hands and seals the day and year first above mentioned.

EDWARD JORDAN, [SEAL.]
Solicitor of the Treasury.
ALEX. BONNEVAL. [SEAL.]
J. HERNANDEZ. [SEAL.]
GEO. BINDER. [SEAL.]

Witnesses to signature of Edward Jordan, solicitor:
J. M. McKENNEY.
THOMAS DUTTON.

Witnesses to signatures of Alexandre Bonneval, Joseph Hernandez, & Geo. Binder:
JA'S FAHEY.
M. L. AINSWORTH.

107 DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Be it remembered that on the thirty-first day of October, in the year one thousand eight hundred and sixty-seven, before me, the undersigned, a commissioner, resident in the District of Columbia, duly commissioned and qualified by the executive authority and under the laws of the State of Louisiana, to take the acknowledgement of deeds, &c., to be used or recorded therein, personally appeared Edward Jordan, solicitor of the Treasury of the United States, to me known to be the individual named in, and who executed the annexed instrument, and acknowledged to me that he did sign, seal, and deliver the same as his free act and deed on behalf of the United States, on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] (Signed) N. CALLAN,
Commissioner for Louisiana in the District of Columbia.

108 STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this sixth day of December, eighteen hundred and sixty-seven, before me, the undersigned notary public, duly commissioned and sworn, in and for the parish of Orleans and the city of New Orleans, personally appeared Alexander Bonneval, Joseph Hernandez, and George Binder, of this city, to me known to be the individual' named in, and who executed the foregoing instrument, and acknowledged to me that they did sign and seal the same, on this sixth day of December, A. D. eighteen hundred and sixty-seven, for the purposes therein set forth and expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesaid.

[SEAL.] S. MAGNER, *Not. Pub.*

[5 cent int. rev. stamp.]

109 Schedule of debts and bills payable referred to in the within agreement.

4 notes for $4,333 $\frac{33}{100}$ each, given for the horse station stable, and payable 20th December, 1867, and 20th December, 1868, with 8% interest..... $19,413 31

1 note for $4,166 66/100, given for the square corner of Napoleon & S't Charles streets, and payable 8th May, 1868, with 8% interest		4,833 32
6 notes given to D'r Elliot for 102 mules, payable at different dates within eight months, with interest		23,340 00
Amount due the Carrollton R. R. Company for old rolling-stock sold by the lessee, and to be accounted for by them.		10,000 00
2 notes of $8,666 66/100 each, given for the hotel at Carrollton, and payable 2d June, 1867, and 2nd June, 1868, with interest, amounting to	$19,413 32	
1 note $2,666 66/100, given for square of ground near Napoleon avenue, and payable 2d May, 1868, with interest	3,091 10	
		22,504 42
Pay-rolls for month of July		10,521 17
Office rent for July, $125; railroad rent last half of July, $854.16		979 16
U. S. tax on July receipts, $490.57; P. Makinney, $40.00.		530 57
Stevens & Seymour, $20.00; Stark, Stauffer & Co., $94.35.		114 35
Hall, Young & Co., $66.92; McDuff & Co., $4,119.10; Hill & Veazie, $24.40		4,210 42
Geddes & Shakespeare, $11.69; Kearny, Blois & Co., 56.00; H. Perry, $2.00		69 69
110 Horter, Peterson & Fenner, $24.05; G. A. Morison, $92.98; F. Fischer, $156.77		273 80
N. O. & C. R. R. Co., $414.85; John Rooney, $1,000; I. C. Davey, $1,324.90		2,739 75
Taylor & Co., $1,599.55; Bridge & Son, $45.00; Page & Co., $362.37		2,006 92
I. B. Slawson, $1,400; John Stephenson, $805.00; I. P. York, $100.00		2,305 00
D'r Jo's Eliott, mules		9,000 00
Amount received for old rolling-stock sold since last statement of liabilities furnished, and increasing the amount received for rolling stock sold to $20,009 80/100		10,009 80
		122,852 58
Amount required to complete the road, estimated		40,000 00
		$162,852 58

EXHIBIT K.—*Filed with bill July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

Sale by the United States of America to Alex. Bonneval, Geo. Binder, and Joseph Hernandez, 31st Octo., 1867.

Registered in parish of Orleans in book No. 93, folio 462.
Registered in parish of Jefferson in book K, folios 384, 5, 6.

111 In consideration of the sum of two hundred and eighty-eight thousand dollars, paid to the United States by Alexander Bonne-

val, Joseph Hernandez, and George Binder, of the city of New Orleans, parish of Orleans, State of Louisiana, the said United States, by Edward Jordan, Solicitor of the Treasury, acting herein with the approval of the Secretary of the Treasury, in pursuance of the authority conferred on him, the said Solicitor of the Treasury, by an act of Congress entitled "An act to provide for the appointment of a solicitor of the Treasury," approved May 29th, 1830, and by the ninth section of an act entitled "An act to prevent and punish frauds upon the revenue, to provide for the more certain and speedy collection of claims in favor of the United States, and for other purposes," approved March 3d, 1863, hereby sell, assign, transfer, convey, release, and quit-claim unto the said Alexander Bonneval, Joseph Hernandez, and Georges Binder, in the proportion of one undivided third part to each and to their, and each of their, heirs and assigns, all and singular, the right, titles, interest, shares, claims, and demands of every nature and kind whatever of the United States of, in, and to the following described property, to wit:

112 1st. The lease of the New Orleans and Carrollton Railroad and other franchises thereof, and the railroad tracks, rolling-stock, engines, cars, live stock, and other appurtenances thereunto belonging or in anywise appertaining.

2d. The copartnership entered into between Thomas P. May, Augustus C. Graham, and Gustave Toutant Beauregard, for the purpose of conducting the business of the said railroad by an act passed before A. Ducatel, a notary in said city, on the eighteenth day of April, one thousand eight hundred and sixty-six, which said act of copartnership is referred to for a more particular and detailed statement and description of the property, franchises, rights, privileges, and interest thereby and hereby affected, and which said lease was obtained by the said G. T. Beauregard as per act of lease in the premises passed before S. Magner, a notary in said city, on the twelfth day of April, one thousand eight hundred and sixty-six, which said act of lease is also referred to for greater certainty.

3rd. And the real estate hereinafter described, to wit:

I. A certain square of ground, with all the buildings, improvements, rights, privileges, and appurtenances thereunto belonging or in anywise appertaining, situate in the city of Jefferson, parish of

113 Jefferson, State of Louisiana, designated by the number sixty-six on a lithographic plan deposited in the office of Adolphe Mazureau, a notary in the city of New Orleans, the said square comprized between Nayades, Apollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive.

II. A certain square of ground, together with the improvements thereon, and all the rights, ways, privileges, and advantages thereunto belonging, or in any wise appertaining, situate in the city of Jefferson, parish of Jefferson, State of Louisiana, designated by the number sixty-five, comprised between Napoleon avenue, Berlin, Nayades, and Apollo streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive, in conformity with a lithographic plan deposited in the office of Adolphe Mazureau, a notary in said city of New Orleans.

III. A certain peice or portion of land situate in the town of Carrollton, parish of Jefferson, State of Louisiana, being a triangle bounded by Levee street, Carrollton avenue, and First street, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and eleven feet two inches and one and a half line front on First street, and seven hundred and ninety-eight feet four inches

114 front on Levee street, together with all the buildings and im-

provements thereon, and appurtenances thereof, and all the rights, ways, servitudes, privileges, and advantages thereunto belonging.

IV. Seven certain lots of ground, situate in the first district of said city of New Orleans, in the square bounded by S't Charles, Felicity, Apollo, or Carondelet and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan deposited in the office of S. Magner, a notary in said city, as plan number one hundred and sixteen, according to which plan said lots measure as follows, to wit:

Lot No. one, thirty-six feet nine inches front on S't Charles street, by a depth of ninety-four feet between parallel lines.

Lots three, four, and five, immediately in rear of said lot No. one, adjoin each other and measure together about one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to S't Charles street, and contiguous to the rear line of lot No. one. About eighty-two feet six inches on the side nearest to Appollo, now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear.

115 And lots six and seven, adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measure each thirty-one feet eleven inches and five lines front on Polymnia street by a depth of one hundred and twenty feet between parallel lines, together with all and singular the buildings and improvements thereon and appurtenances thereof known as the "Horse Station," and all the rights, ways, servitudes, privileges, and advantages thereunto belonging, or anywise appertaining. Which said real estate was acquired for the use and account of the aforesaid copartnership, as the books thereof will show, by four different purchases, to wit:

One from S. A. Kohn, by act passed before A. Ducatel, a notary in the city of New Orleans, on the thirteenth day of April, one thousand eight hundred and sixty-six. Another from William C. Raymond, by act passed before the same notary, on the fifth day of May, one thousand eight hundred and sixty-six.

The third from the New Orleans and Carrollton Railroad Company, by act passed before S. Magner, a notary in said city of New Orleans, on the twenty-ninth day of June, one thousand eight hundred and sixty-six; and the fourth and last from the same company by

116 act passed before the same notary on the fifteenth day of January, one thousand eight hundred and sixty-seven.

The interest in the above described property intended to be hereby conveyed being the same which was acquired by the United States from Thomas P. May and Augustus C. Graham, by act passed before Andrew Hero, j'r, a notary in the city of New Orleans, on the sixteenth day of May, one thousand eight hundred and sixty-seven, together with all rights, titles, interest, claims, and demands of the United States, of, in, and to said property, rights, franchises, and privileges from whatsoever source acquired.

To have and to hold the hereinabove conveyed rights, titles, interest, shares, claims, and demands of the United States, in and to the above-described property unto the said Alexander Bonneval, Joseph Hernandez, and Georges Binder, their heirs and assigns, forever.

Reserving, nevertheless, on behalf of the United States, the vendor's privilege granted by the laws of Louisiana, to secure the payment of two promissory notes made by said Alexander Bonneval, Joseph Hernandez, and Georges Binder, to the order of and endorsed by F. A. Du-

cros, L. E. Lemarie, and John Dolhonde, and dated August 20th,
117 1867, one for the sum of one hundred thousand dollars at three months, and one for the sum of eighty-eight thousand dollars at six months after date; said notes having been given to the United States in payment of a portion of the purchase-money of the property hereinabove described.

In witness whereof the said Solicitor of the Treasury hath in behalf of the United States hereunto set his hand and affixed his official seal this thirty-first day of October, in the year one thousand eight hundred and sixty-seven.

(Signed) EDWARD JORDAN,
Solicitor of the Treasury.

Signed, sealed, and delivered in the presence of—
(Signed) J. H. McKINNEY.
" THOMAS DUTTON.

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Be it remembered that on the thirty-first day of October, in the year one thousand eight hundred and sixty-seven, before me the undersigned, a commissioner, resident in the District of Columbia, duly commissioned and qualified by the executive authority and under the laws of
118 the State of Louisiana to take the acknowledgement of deeds, &c., to be used or recorded therein, personally appeared Edward Jordan, Solicitor of the Treasury of the United States, to me known to be the individual named in and who executed the annexed instrument, and acknowledged to me that he did sign, seal, and deliver the same as his free act and deed on behalf of the United States, on the day and year therein mentioned, and for the consideration, uses, and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year aforesid.

(Signed) N. CALLAN,
Commissioner for Louisiana in the District of Columbia.

STATE OF LOUISIANA,
City of New Orleans:

I, Selim Magner, a notary public in and for the parish of Orleans and the city of New Orleans, do hereby certify the above and foregoing instrument in writing to be a true and correct copy of the original document annexed to an act of deposit in my office under date of the seventh of December, 1867.

In testimony whereof I have hereunto set my hand and seal, at
119 New Orleans aforesaid, on this ninth day of July, A. D. 1869.

[SEAL.] S. MAGNER,
Not. Pub.

[Five-cent int. rev. stamp.]

EXHIBIT L.—*Filed with bill July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. | No. 5931. 15th October, 1867.

Fusion between the New Orleans and Carrollton Railroad Company, G. T. Beauregard, Alexander Bonneval, Joseph Hernandez, and George Binder.

Registered in parish of Orleans, in book No. 92, folio No. 666.
Registered in parish of Jefferson, in book I. J., folio No. 970.

STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this fifteenth day of October, eighteen hundred and sixty-seven, before me, Selim Magner, a notary public, duly
120 commissioned and sworn in and for the parish of Orleans and the city of New Orleans, personally came and appeared:

1st. Benjamin Laurent Milladon, esquire, of this city, president of the New Orleans and Carrollton Railroad Company, duly authorized to act in the premises by virtue of a resolution of the board of directors of said company adopted at their sitting of the second of October, 1867, of which a certified copy is hereto annexed as part hereof, of the first part.

2nd. Stephen Richard Proctor, esquire, of this city, herein acting in behalf and as the duly authorized agent of Gustave Toutant Beauregard, esquire, also of this city, by virtue of two acts of procuration passed before A. Ducatel, notary public in this city, on the third and sixth of August, 1867.

3rd. George Binder, esquire, of this city, herein acting as well in his own name and behalf as in his quality of attorney in fact of Joseph Hernandez, also of this city, duly appointed per act of procuration passed before me, notary, on the twentieth of August, 1867.

4th. Alexander Bonneval, esquire, of this city; said Beauregard, Binder, Hernandez, and Bonneval being parties of the second part:

Which appearers mutually declared that, taking as a basis an
121 act of the legislature of this State (No. 59), approved March 9th, 1867, entitled "An act for the relief of the Carrollton Railroad Company," and furthermore the proposal made by said parties of the second part to the said New Orleans and Carrollton Railroad Company, party of the first part, a certified copy whereof is hereto annexed for reference as part hereof, together with the resolution of the board accepting the same, and the approval of the majority of the stockholders consenting to make a fusion and consolidate the interests of the stockholders with the said parties of the second part, present owners of a lease made to said Beauregard by said railroad company by act passed before me, notary, on the twelfth of April, 1866. Now, therefore, they, said parties, agree and hereby do mutually agree as follows, to wit:

1st. The capital stock, after the signature of this present act, having for object the consolidation of the two interests, shall be eight hundred thousand dollars, to be divided equally between the present stockholders of said company and the said parties of the second part, namely,
four hundred thousand dollars for the stockholders and four hun-
122 dred thousand dollars for the parties of the second part, each share to be of one hundred dollars.

2d. The present fusion to take place on condition that the said parties of the second part shall deliver to the said New Orleans and Carrollton Railroad Company, and shall put said company in immediate possession of all the property, real, personal, rights, titles, interest, effects, and assets of whatsoever nature or kind appertaining to the Carrollton Railroad, and in which it may be interested, and whether the same stands in the name of said parties of the second part or in that of said railroad. And all which rights are held by said parties of the second part, namely, by said Beauregard, under a lease made to him by said Carrollton Railroad Company, by act passed before me, notary, on the 12th of April, 1866, which lease in consequence of the present fusion is cancelled and annulled from this date, and by several purchases of real estate hereinafter mentioned, and by said Binder, Bonneval, & Hernandez, two-thirds by reason of the purchase made by them from the United States of America, by act before Gustave Le Gardeur, j'r, a notary public in this city, on the twenty-first of August, 1867.

123 3rd. The New Orleans and Carrollton Railroad Company shall assume and be responsible for all the debts and liabilities of the said Carrollton Railroad Company, whether due by or claimed from the lessee or the stockholders, and whatever may be the cause, nature, or character and extent of said debts and liabilities, except, however, the liabilities hereinafter mentioned and due by said Binder, Hernandez, and Bonneval, and resulting from said of purchase of the twenty-first of August, 1867.

And now, in order to carry into effect said agreement and to merge the interests and liabilities of the stockholders of the said New Orleans and Carrollton Railroad Company, and of said parties of the second part, the New Orleans and Carrollton Railroad Company herein represented by said Milaudon, president, present as aforesaid, is now put into and acknowledges to be in possession of:

1st. All and singular the rights, titles, and interest, and other franchises of the said Carrollton Railroad and the railroad tracks.

2d. All the railroad improvements, the horses and mules, or
124 whatsoever other live-stock, the cars, harnesses, rolling-stock, engines, and improvements and appurtenances thereof, of all which a detailed list or schedule is hereunto annexed for reference and as part hereof, duly signed by said parties and me, notary.

3rd. All the bills receivable and interest therein, amounting to the sum of eight thousand four hundred and eighty-one dollars and sixty cents, and ready money amounting to eleven thousand five hundred and fifty-nine dollars and five cents.

4th. All the rights, titles, interests, rights and actions in warranty of the parties of the second part in and to the following-described real estate, to wit:

1st. A certain square of ground, with the buildings and improvements thereon, situate in the city and parish of Jefferson, in this State, designated by the No. (66) sixty-six, in a lithographic plan deposited in the office of Adolphe Mazureau, notary public, in this city; the said square being comprized within Nayades, Apollo, Milan, and Berlin streets, and containing twenty-four lots, numbered from one to twenty-four, inclusive.

2d. A certain square of ground, together with the improvements, &c., thereon, situate in the city and parish of Jefferson, in
125 this State, designated by the number sixty-five, comprised within Napoleon avenue, Berlin, Nayades, and Apollo streets, containing twenty-four lots, numbered from one to twenty-four, inclusive, in the above-mentioned plan.

3rd. A certain piece or portion of land situate in the town of Carrollton, parish of Jefferson, in this State, being a triangle bounded by Levee and First streets and Carrollton avenue, and measuring, more or less, five hundred and eighteen feet front on Carrollton avenue, six hundred and seven feet two inches and a half line front on First street, and seven hundred and ninety-eight feet four inches front on Levee street, with the buildings, improvements, &c., thereon.

4th. Seven certain lots of ground situate in the first district of this city, in the square bounded by S't Charles, Felicity, Apollo, or Carondelet, and Polymnia streets, designated by the numbers one, two, three, four, five, six, and seven, on a plan No. one hundred and sixteen, according to which plan said lots measure as follows, viz:

126 Lot No. one, thirty-six feet nine inches front on S't Charles street, by a depth of ninety-four feet between parallel lines.

Lots two, three, four, and five, immediately in the rear of lot No. one, adjoin each other and measure together one hundred and thirty-two feet six inches front on Felicity street, about one hundred and fourteen feet one inch on the line nearest to S't Charles street and contiguous to the rear line of lot No. one, about eighty-two feet six inches on the side nearest to Appollo, now Carondelet street, and about one hundred and twenty-seven feet nine inches in the rear.

And lots six and seven, adjoining each other and extending back to the rear line of the lots fronting on Felicity street, measuring each thirty-one feet eleven inches and five lines front on Polymnia street by a depth of one hundred and twenty feet between parallel lines, together with the buildings and improvements thereon and appurtenances thereof known as the "Horse Station."

All which real estate was acquired by said Beauregard for account of the copartnership existing between him, Thomas P. May, and Augustus C. Graham, by four different purchases, to wit:

127 The firstly-described from S. A. Kohn, per act passed before A. Ducatel, notary public, in this city, on the thirteenth of April, 1866.

The secondly-described from W'm C. Raymond, per act passed before the same notary on the fifth day of May, 1866.

The thirdly-described from the New Orleans and Carrollton Railroad Company, per act passed before me, notary, on the twenty-ninth of June, 1866.

And the fourthly-described from the same company, per act passed before the same notary on the fifteenth of January, 1867.

And by act passed before Gustave Le Gardeur, j'r, a notary public in this city, on the twenty-first of August, 1867, the said Alexander Bonneval, Joseph Hernandez, and George Binder acquired the interest of said Thomas P. May and Augustus C. Graham in said real estate, being two-thirds thereof, by purchase from the United States of America, the remaining third belonging to him, said Beauregard.

In consideration of the foregoing fusion and delivery of property, the New Orleans and Carrollton Railroad Company shall issue eight thou-

128 sand shares of its stock, the shares to be of one hundred dollars each, and the parties of the first part shall receive four thousand shares, and the parties of the second part shall receive four thousand shares of said stock, which shares he, said Milaudon, binds his said company to issue, in order to deliver the same to the parties of the first and second part, as herein above agreed.

In further consideration of the foregoing fusion and delivery of property, the New Orleans and Carrollton Railroad Company does hereby

assume and bind itself to pay and be responsible for all the debts and liabilities of said Carrollton Railroad and of said parties of the second part, so far as their liabilities for said road are concerned, by reason of all which said New Orleans and Carrollton Railroad Company having by these presents consolidated their interests with that of the said parties of the second part, the said railroad company, as one corporate body, becomes and is liable for all debts due by said company and by said parties of the second part, except, however, the indebtedness of said Binder, Hernandes, and Bonneval under their said act of purchase of the twenty-first of August, 1867, of which further mention is hereafter made.

129 And the said Binder, for himself and said Hernandez, and said Bonnavel, for himself, do hereby bind themselves to pay and take up and deliver to the said New Orleans and Carrollton Railroad Company two several promissory notes, dated the twentieth of August, 1867, made and subscribed by them to the order of and endorsed by F. A. Ducros, L. E. Lemarie, and John Dolhonde, payable at the office of the Assistant Treasurer of the United States in this city, one for one hundred thousand dollars, payable in three months, and the other for eighty-eight thousand dollars, payable in six months, and given in part payment of the purchase-price stipulated in said sale of the twenty-first of August, 1867, to which said parties hereby specially refer.

And as a special guarantee to said New Orleans and Carrollton Railroad Company for the payment of said notes by them, said Binder, Hernandez, and Bonnavel, they, said Binder, for himself and said Hernandez, and said Bonnavel, for himself, and said Proctor, for said Beauregard, do hereby agree to leave in possession of said New Orleans & Carrollton Railroad Company twenty-five hundred shares of the

130 four thousand shares coming to them by reason of this present act of fusion and consolidation of interests, it being, however, agreed and understood that, on the payment and delivery to said railroad company by said parties of the second part of the said note of one hundred thousand dollars, said parties of the second part shall immediately be entitled to and receive one thousand shares of the twenty-five hundred shares so retained as security, and that on payment of said note of eighty-eight thousand dollars, and the delivery thereof to said company by said parties of the second part, they shall immediately be entitled to and shall receive the remaining fifteen hundred shares of stock. The said Proctor also binds said Beauregard to deliver up to said railroad company all paid notes in the property presently delivered.

By reference to the annexed certificate of the recorder of mortgages in and for this city and parish, it appears that the property above described and situate in this city stands incumbered in the name of said parties of the second part—

1st. By the mortgage they granted in favor of the United States

131 of America, per act passed before Gustave Le Gardeur, ju'r, notary public, on the twenty-first of August, 1867, to secure one hundred and eighty-eight thousand dollars, interest and costs.

2nd. By the mortgage they granted in favor of the New Orleans and Carrollton Railroad Company, per act passed before me, notary, on the fifteenth of January, 1867, to secure seventeen thousand three hundred and thirty-three dollars thirty-three and one-third cents, interest and costs.

3rd. The general mortgage in favor of M'r's Marie Celine Avégno, wife of said Alexander Bonneval, resulting from their marriage contract, executed before H. Paul Caire, late notary public, in this city, on

the twenty-eighth of May, 1853, in and by which act he, said Bonneval, acknowledges to have received and taken charge towards his said wife of the sum of twelve thousand dollars.

4th. The general mortgage in favor of the same, resulting from an act of donation passed before A. Ducatel, notary, on the fourteenth of June, 1855, by which said Bonneval took charge towards his said wife of the sum of thirteen thousand three hundred and ten dollars and eight cents.

132 5th. And by the draining privilege.

And by reference to the annexed certificate of the recorder of the parish of Jefferson it appears that the property above described and situate in the parish of Jefferson stands incumbered in the name of said parties of the second part—

1st. By the draining privilege.

2d. The privilege in favor of H'y F. Smith, for two hundred and twenty-five dollars, for making plank road in front of square No. sixty-six, on Apollo street.

3rd. The privilege in favor of the same, in the same amount, for making plank road in front of square sixty-five, on Apollo street.

4th. The privilege in favor of the Southern Paving Co., for laying pavement in front of square No. sixty-five, in the sum of three thousand five hundred and forty-eight $\frac{61}{100}$ dollars.

5th. The privilege in favor of the same company for laying pavement in front of square No. 66, in the sum of eighteen hundred and sixty-six $\frac{66}{100}$ dollars.

6th. The privilege in favor of J. Rooney, in the sum of three hundred dollars, for curbing in front of square No. sixty-six.

7th. The privilege in favor of J. Rooney, in the same amount, for curbing in front of square No. sixty-five.

133 8th. The privilege in favor of the city of Carrollton for repairing seven hundred and ninety-nine feet of brick pavement on Levee street, in front of square eight in Carrollton, in the sum of one hundred and three $\frac{87}{100}$ dollars.

9th. The mortgage which by an act passed before A. Ducatel, notary public, dated the thirtieth day of April, 1866, Beauregard, May, and Graham granted in favor of S. A. Kohn, on square No. sixty-six, to secure two notes amounting to five thousand three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars.

10th. The one which by an act passed before the same notary, dated the fifth of May, 1866, Beauregard, May, and Graham granted in favor of W'm C. Raymond, on square No. 65, to secure two notes, amounting to eight thousand three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars.

11th. The privilege which might result from the registry of a lease made on the twenty-fourth of October, 1865, by the New Orleans and Carrollton Railroad Company to Peter Williams of the triangle in Carrollton and the buildings thereon known as the "Carrollton Hotel."

12th. The mortgage which by an act passed before me, notary, on the twenty-ninth of June, 1866, G. T. Beauregard granted in favor
134 of the New Orleans and Carrollton Railroad Company on the property above thirdly described, to secure two notes amounting to seventeen thousand three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars.

13th. According to said certificate it would appear that there existed a general mortgage, resulting from the registry of a bond signed by G. T. Beauregard and Thomas P. May, in favor of M'r's Isadore L. Dowty, wife of A. B. Seelye, for the sum of sixteen thousand dollars, which general mortgage has been given by the recorder of the parish of Jef

ferson through error, the said New Orleans and Carrollton Company not in any manner making itself responsible for the payment of said bond.

14th. The one which by an act passed G. Le Gardeur, j'n'r, notary public, on the twenty-first of August, 1867, A. Bonneval, Joseph Hernandez, and George Binder granted in favor of the United States on all of the above-described property to secure the payment of the sum of one hundred and eighty-eight thousand dollars.

And to these presents personally intervened, 1st, Mistress Rosema Daunoy, of the full age of majority, the wife of the above-named
135 Joseph Hernandez herein, acting in the absence of her said husband by virtue of the hereunto-annexed authorization, and, 2d, Louis Emile Lemarie, of this city, herein acting as the attorney in fact of Mistress Celine Marie Avegno, wife of the above-named Alexander Bonneval, duly appointed per act of procuration (containing remuneration) passed before John G. Nicolay, U. S. consul in Paris, France, on the sixteenth September, eighteen hundred and sixty-seven, hereto annexed for reference, which appearers, the said M'r's Hernandez for herself, and said Lamarie as attorney in fact of said M'r's Avegno, declared after having taken cognizance of the present act of fusion, which I, notary, carefully read and explained to them, that it is their *attention* not only to ratify the same, but also to make renunciation, the said M'r's Hernandez for herself, and said Lemarie for his said constituent, to all the rights which they have or may have in the above-described property, whereupon I, the said notary, declared unto them that by the laws of this State they possessed a general mortgage on all the property of the above-named Joseph Hernandez and Alexander Bonneval and upon that of the community in case they should renounce thereto—
136 First. For the restitution of their dower and the reinvestment of dotal property brought by them in marriage.

Second. For the restitution of dotal property by them acquired during marriage by inheritance, donation, or otherwise.

Third. For indemnity against all debts contracted or which they may hereafter contract with their said husbands.

Fourth. For such of their paraphernal property and funds as may have been alienated by their said husbands, or of which they have had or may have the administration or enjoyment, or of which they may otherwise have benefited.

Fifth. For nuptial presents made to them by their said husbands or others. That in making their intended renunciation the said M'r's Hernandez for herself, and the said M'r's Bonneval through her said attorney in fact, would deprive themselves irrevocably and forever of all rights of reclamation against the above property, whether under mortgage, privilege, or otherwise.

Whereupon the said M'r's Hernandez and said attorney in fact
137 declared that they nevertheless persisted in the intention they had announced to ratify the above delivery of real estate and to dispossess themselves of all rights which they have or may have thereon, whether by marriage contract, dower, donation, or otherwise, and the said M'r's Hernandez for herself, and said Lemarie as attorney in fact aforesaid, again declared that they do hereby renounce henceforth and forever all and singular their said rights, and transfer the same to the said New Orleans and Carrollton Railroad Company, its successors and assigns, to be had and held by them, enjoyed in law and thereout, and they do hereby bind themselves and their heirs to the said New Orleans and Carrollton Railroad Company, its successors and assigns, that they

shall and will at all times acknowledge the validity of the present act of delivery of real estate as above set forth, and of this renunciation to all the rights they may have in the property thus delivered to the said New Orleans and Carrollton Railroad Company, and that they, said M'r's Hernandez for herself, and said Lemarie as attorney in fact aforesaid, shall never seek to oppose or impair the force of this act of de-
138 livery of property, hereby renouncing the benefit of all laws, privileges, and customs of which they might avail themselves or which may be in their favor in the premises.

And finally the hereinabove-named parties of the first and second part declared that the real estate, with the buildings thereon, presently delivered by this act of fusion, are valued at the sum of one hundred and eighty-nine thousand and seventy dollars and fifty-eight cents, wherefore the U. S. internal revenue stamps of one hundred and eighty-nine dollars and fifty cents are hereto attached.

And thereupon personally came and appeared, and intervened to this act, Mistress Rose Elizabeth Canongee, of the full age of majority, wife of said George Binder, who, being herein duly authorized and assisted by her said husband, took cognizance of the foregoing act of sale, which I, notary, carefully read and explained to her, and having so done, she declared it was her intention not only to ratify said sale, but to make renunciation of all rights she has, by mortgage or otherwise, on the said property, upon which I, notary, declared to her separately and apart from her said husband and out of his presence, as it is my duty, that by the laws of this State she possessed a general
139 mortgage on all the property of her said husband, and upon that of the community in case she should renounce thereto—

First. For the restitution of her dower and the reinvestment of dotal property brought by her in marriage.

Second. For the restitution of dotal property by her acquired during marriage, by inheritance, donation, or otherwise.

Third. For indemnity against all debts contracted or which she may hereafter contract with her said husband.

Fourth. For such of her paraphernal property and funds as may have been alienated by her said husband, or of which he has had or may have the administration or enjoyment, or of which he may otherwise have benefitted.

Fifth. For nuptial presents made to her by her said husband or others. That in making her intended renunciation she would deprive herself irrevocably and forever of all rights of reclamation against said property, whether under mortgage, privilege, or otherwise.

Whereupon the said wife declared that she still persisted in the intention she had announced to ratify said act of sale and dispossess herself of all rights and liens which she has upon said property, whether
140 by marriage contract, dower, donation, or otherwise, and the said husband being now again present before me, and authorizing his said wife, she again declared that she does hereby formally renounce, henceforth and forever, all and singular, her said rights, and transfer the same to the said New Orleans & Carrollton Railroad Company and assigns, to be had and held by them *and them* and by them enjoyed, in law and thereout; and she binds herself and her heirs to the said New Orleans & Carrollton Railroad Co. and assigns that she and they shall and will at all times acknowledge the validity of the present sale and of the renunciation she now makes of all rights which she has or may have in and to the property herein and hereby sold, and that neither she nor they shall ever seek to oppose or impair the force of this act, hereby

renouncing the benefit of all laws, privileges, and customs of which she might avail herself, or which are in her favor in the premises.

Done and passed at New Orleans the fifteenth day of October, eighteen hundred and sixty-seven, in the presence of Edward G. Gottschalk and James Fahey, witnesses residing in this city, who
141 have signed their names, with the said appearers and me, notary, after reading thereof.

(Signed) B. L. MILLAUDON.
" GEO. BINDER.
" per pro. JOS. HERNANDEZ.
" GEO. BINDER.
" L. E. LEMARIÉ.
" G. T. BEAUREGARD.
" per pro. S. RICH'D PROCTOR.
" R. E. BINDER.
" ALEXANDER BOUNEVAL.
" ROSEMA HERNANDEZ.

JAMES FAHEY.
E. G. GOTTSCHALK.

S. MAGNER,
Not. Public.

A true copy.
New Orleans, L'a, July 9, 1869.
[SEAL.]

S. MAGNER,
Not. Pub.

[5-cent int. rev. stamp.]

EXHIBIT M.—*Filed with bill July 10th*, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET ALS. } No. 5931.

Transfer of interest of Graham, by A. C. Graham, to Fourth National Bank of New York.

Know all men by these presents that Augustus C. Graham, of Flushing, in Queens County, State of New York, of the first part,
142 for and in consideration of the sum of one dollar to me in hand paid by the Fourth National Bank of the city of New York, of the second part, the receipt whereof is hereby acknowledged, have granted, bargain, sell, assign, transfer, set over unto the said party of the second part, its successors and assigns, all the estate, right, title, and interest of and in a certain "indenture of lease" made by the New Orleans and Carrollton Railroad Company to "Gustave Toutant Beauregard," dated the 12th April, 1866, and recorded in conveyance office of the parish of Jefferson, in the State of Louisiana, in book I. J., folio 312, on April 19th, 1866, to which I may be entitled by virtue of certain articles of copartnership made between said Gustave Toutant Beauregard and Thomas P. May and myself, bearing date the 18th of April, 1866, or otherwise. And also all my right and interest in any property and effects of said partnership, and also all debts due to me from said partnership or any other members thereof.

143 In witness whereof I have hereunto set my hand and seal this 8th day of May, in the year 1867.

(Signed) AUGUSTUS C. GRAHAM. [SEAL.]

Signed and delivered in the presence of—
MOSES B. MACLAY.
A. A. ALVORD.
B. F. LEE, Jr.

UNITED STATES OF AMERICA,
State, County, and City of New York, ss:

I, Moses B. Maclay, residing in the city of New York, a commissioner in said State to take depositions, affidavits, acknowledgements of deeds, powers of attorneys, &c., &c., to be used or recorded in the State of Louisiana, duly commissioned and qualified, do hereby certify and make known that on the day of the date hereof, before me, personally appeared Augustus C. Graham, of the city of New York, known to me to be the person described in and who executed the annexed agreement, and executed the same in my presence, and in the presence of A. A. Alford and B. F. Lee, jr., witnesses of lawful age, residing in the said city, who have subscribed the same with me; and the said Augustus C. Graham acknowledged to me that he executed the same, as his act and deed, for the purpose therein mentioned.

144 In testimony whereof I have hereunto subscribed my name and affixed my seal of office this 8th day of May, 1867.

(Signed) MOSES B. MACLAY,
Louisiana Commissioner in the City of New York.

Parish of Jefferson, the 16th May, 1867.

(Signed) ERNEST COMMARGEN,
Recorder.

I, the undersigned, recorder in and for the parish of Jefferson, do hereby certify that the foregoing is a true and correct copy of the registry of an act registered on the 15th May, 1867, in conveyance office, in book I. J., folio 812.

In witness whereof I have hereunto set my hand and affixed the seal of my office on this 14th day of October, 1867.

[SEAL.] (Signed) ERNEST COMMARGEN,
Recorder.

[Five-cent stamp.]

Subpœna in chancery to Gustave T. Beauregard.—Issued July 10th, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

145 UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Gustave T. Beauregard, individually and as member of the firm of G. T. Beauregard, T. P. May, &

A. C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and said Gustave T. Beauregard and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

146 (Signed) D. URBAN, *Clerk*,
[SEAL.] By F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869; otherwise the bill may be taken pro confesso.

(Signed) D. URBAN,
Clerk,
By F. B. VINOT,
D'y Clerk.

Marshal's return on subpœna.

Received by the U. S. marshal July 12th, 1869; and G. T. Beauregard was served at office, 118 Camp street, on the 13th, A. D. 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to Thomas P. May.—Issued July 10th, 1869.

United States circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district
147 of Louisiana, greeting:

You are hereby commanded to summon Thomas P. May individually and as member of the firm of G. T. Beauregard, T. P. May, and A. C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and said Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] D. URBAN,
Clerk,

(Signed) By F. B. VINOT,
D'y Clerk.

148 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869; otherwise the bill may be taken pro confesso.

[SEAL.] (Signed) D. URBAN,
Clerk,
By F. B. VINOT,
D'y Clerk.

Marshal's return on subpœna.

Received July 12th, 1869, and returned not served.

The clerk of the hon. the circuit court is requested to issue an alias subpœna in chancery.

N. O., Sept'r 6th, 1869.

(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

Subpœna in chancery to Augustus C. Graham.—Issued July 10th, 1869.

United States circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931

UNITED STATES OF AMERICA.

The President of the United States to the marshal of the district of Louisiana, greeting:

149 You are hereby commanded to summon Augustus C. Graham individually, and as a member of the firm of G. T. Beauregard, T. P. May, A. C. Graham, and a citizen of the State of New York, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, and a citizen of the State of Indiana, is complainant, and said Augustus C. Graham and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the

year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
F. B. VINOT, *D'y Clerk.*

150 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return on subpœna.

Received July 12th, 1869, by the U. S. marshal, and after diligent search was unable to find the aforesaid Augustus C. Graham, and was informed that he had left the State.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery to the New Orleans & Carrollton R. R. Co.—Issued July 10th, 1869.

Circuit court of the U. S.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, greeting:

151 You are hereby commanded to summon the New Orleans & Carrollton Railroad Company, represented by the president thereof, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery, filed against them and others, wherein Charles Case, receiver of the First National Bank of New Orleans, and a citizen of the State of Indiana, is complainant, and said New Orleans and Carrollton Railroad Company and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, this 10th day of July in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

152 The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States cir-

cuit court on or before the first Monday of September, 1869, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Marshal's return on subpœna.

Received July 12th, 1862, by the U. S. marshal and G. T. Beauregard, president of said railroad company, was served at office of company, 118 Camp street, on the 13th day of July.

(Signed) S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery, to the Fourth National Bank of New York.—Issued July 10th, 1869.

U. S. circuit court.

CHA'S CASE, REC'R OF 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon the Fourth National Bank of New York, represented by P. C. Calhoun, the president thereof,
153 to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery, filed against them and others, wherein Charles Case, receiver of the First National Bank of New Orleans and a citizen of the State of Indiana, is complainant, and said Fourth National Bank of New York and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869; otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

154 *Marshal's return on subpœna.*

Received July 12th, 1869, by the U. S. marshal, and after diligent

search and inquiry the within-named def't, the Fourth National Bank of New York, nor its agent or attorney, could not be found.

N. O., Sept. 6th, 1869.

F. A. WOOLFLEY,
D'y U. S. Marshal.

Subpœna in chancery, to Alexander Bouneval.—Issued July 10th, 1869.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Alexander Bouneval, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery filed against him and others,
155 wherein Charles Case, receiver of the First National Bank of New Orleans, and a citizen of the State of Indiana, is complainant, and said Alexander Bouneval and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed)

D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869; otherwise the bill may be taken pro confesso.

(Signed)

D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

Marshal's return on subpœna.

Received July 12, 1869, by the U S. marshal, and p'lly on
156 Alexander Bouneval, on Banquet corner of Common and Carondelet, on the 13th of July, 1869.

(Signed)

S. W. REED,
D'y U. S. Marshal.

Subpœna in chancery, to Joseph Hernandez.—Issued July 10th, 1869.

United States circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon Joseph Hernandez, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans and a citizen of the State of Indiana, is complainant, and said Joseph Hernandez and others are defendants.

157 Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869; otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

Marshal's return on subpœna.

Received July 12th, 1869, by the U. S. marshal, and Joseph Hernandez served on the 13th of July, A. D. 1869, p'lly, at office, No. 11 Carondelet street, N. O.

(Signed) S. W. REED,
D'y U. S. Marshal.

158 *Subpœna in chancery to G. W. Binder.—Issued July 10th, 1869.*

United States circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon G. W. Binder, a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of September, 1869, then and there to answer a bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, and a citizen of the State of Indiana, is complainant, and said G. W. Binder and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the
159 Supreme Court of the United States of America, this 10th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of September, 1869; otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

Marshal's return on subpœna.

Received July 12th, 1869, by the U. S. marshal, and G. W. Binder served on H. A. Lasassier, partner, who holds his power att'y, 24½ Carondelet street, on the 14 of July, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

160 *Rule to show cause why injunction should not issue.—Entered and filed July 10th, 1869.*

U. S. circuit court, 5th circuit and district of Louisiana. In chancery.

CHA'S CASE, REC'R OF THE FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

On motion of I. D. Rouse, solicitor for Charles Case, complainant in

this suit, and upon producing to the court the bill of complaint sworn to and filed herein, it is ordered that the defendants, Gustave T. Beauregard, Joseph Hernandez, G. W. Binder, Alexander Bouneval, and the New Orleans and Carrollton Railroad Company do show cause on Monday next, the 12th inst., at 11 a. m., why an injunction should not issue, as prayed for in said bill of complaint, and that they severally be notified hereof.

Marshal's return on rule.

Received July 10th, 1869, by the U. S. marshal, and served the papers directed to G. W. Binder by leaving a copy with H. A. Lasassier, a partner, having power att'y for Binder, at 24½ Carondelet street, on the 10th July, A. D. 1869; also one paper directed Alex. Bouneval, in person, at his office, 22½ Carondelet street, July 10th, 1869;
161 also one paper directed to Joseph Hernandez, p'lly, at No 11, Carondelet street, on July 10th, 1869; also one paper for G. T. Beauregard, served on S. Rich'd Proctor, treasurer of N. O. & C. R. R. Co., at the domicil of the said company, at No. 17 Barronne street, at 9 o'clock 5 minutes a. m. on the 12th of July, A. D. 1869; also one paper directed to the N. Orleans & Carrollton R. R. Co., served on S. Rich'd Proctor, treas. of said R. R. Co., at domicil of said company, at 17 Baronne street, at 9 o'clock 5 minutes on the 12th of July, A. D. 1869, G. T. Beauregard, president, & M'r Simons, the att'y of said company, being both out of the city.

(Signed) S. W. REED,
D'y U. S. Marshal.

Order on rule.—Extract from the minutes, July 12th, 1869.

Circuit court of the United States, fifth circuit and district of Louisiana. April term, 1869.

NEW ORLEANS, *Monday, July 12th*, 1869.

Court met pursuant to adjournment.
Pres't, Hon. E. H. Durell, district judge.

CHA'S CASE, REC'R OF THE FIRST NATIONAL Bank of New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The rule taken by complainant on 10th instant was called for trial.
162 I. D. Rouse, for complainant; Semmes & Mott for defendants.
When, after hearing the pleadings, evidence, and arguments of counsel, for reasons orally assigned, it is ordered by the court that an injunction issue restraining G. T. Beauregard & the officers of the New Orleans & Carrollton Railroad Company, as prayed for in the bill, but that the injunction be denied as to the other defendants.

Injunction to Gustave T. Beauregard.—Issued July 12th, 1869.

United States circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

Circuit court of the United States, fifth circuit and district of Louisiana.

The President of the United States to Gustave T. Beauregard, greeting:

Whereas it has been represented to us, in our said circuit court, on the part of Charles Case, receiver of the First National Bank of New Orleans, by his bill of complaint lately exhibited against you
163 and others, touching certain matters and *and* things therein set forth:

Now, therefore, in consideration of the premises and of the allegations in said bill contained, you, the said Gustave T. Beauregard, your attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from transferring, alienating, or encumbering in any manner, to the prejudice of the rights of the complainant, Charles Case, receiver of the First National Bank of New Orleans, the one-third of four thousand shares, or any part thereof, of the capital stock of the New Orleans and Carrollton Railroad Company, acquired by you from the said New Orleans and Carrollton Railroad Company under an agreement as per act dated on or about the 15th of Octo., 1867, until the further order of our said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of United , at the city of New Orleans, this 12th day of July, in the year of our Lord 1869.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

164 *Marshal's return on injunction.*

Received July 13, 1869, by the U. S. marshal and served on G. T. Beauregard at office at 118 Camp street, on the 13th day of July, 1869.

(Signed) S. W. REED,
D'y U. S. Marshal.

Injunction to the N. O. and Carrollton R. R. Co.—Issued July 12th, 1869.

Circuit court of the United States, fifth circuit and district of Louisiana.

CHA'S CASE, REC'R OF THE 1ST NAT'L BANK OF New Orleans
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

Circuit court of the United States, fifth circuit and district of Louisiana.

The President of the United States to the New Orleans & Carrollton Railroad Company, greeting:

Whereas it has been represented to us in our said circuit court on the

part of Charles Case, receiver of the First National Bank of New Orleans, by his bill of complaint lately exhibited against you and others touching certain matters and things therein set forth:

Now, therefore, in consideration of the premises and of the
165 allegations in said bill contained, you, the said New Orleans & Carrollton Railroad Company, your attorneys, and each of you are hereby commanded and strictly enjoined under the penalty of the law that you absolutely refrain and desist from permitting or recognizing in any manner to the prejudice of the said complainant any transfer of one-third of 4,000 shares or any part thereof of the capital stock of the New Orleans & Carrollton Railroad Company, acquired by Gustave T. Beauregard from the said company under an agreement as per act dated on or about the 15th of October, 1869, until the further order of our said court.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 12th day of July, in the year of our Lord 1869.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
Dy Clerk.

Marshal's return on injunction.

Received July 13th, 1869, by the U. S. marshal, and served on G. T. Beauregard, president of said railroad company, at office 118 Camp street, on the 13, A. D. 1869.

(Signed) S. W. REED,
Dy U. S. Marshal.

166 *Affidavit of G. T. Beauregard, J. Hernandez, & Alex. Bonneval.—Filed July 12th, 1869.*

U. S. circuit court. In chancery.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The undersigned, being duly sworn, say that they are credibly informed and believe, and therefore aver, that the complainant, Charles Case, is and claims to be a citizen of the State of Louisiana; that he has given himself out to the world as a citizen of the State of Louisiana, and a lawyer practicing at the bar of New Orleans, and as such domiciled in the city of New Orleans, as appears by petition filed by him in the Court of Claims at Washington, hereto annexed for reference, marked "A."

(Signed) G. T. BEAUREGARD.
" J. HERNANDEZ.
" ALEX. BONNAVEL.

Sworn to and subscribed before me this 12th July, 1869.
K. LOEW, *U. S. C.*

167 *Document A.—Filed with affidavit July 12th, 1869.*

Circuit court of the United States, fifth circuit & district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

In the United States Court of Claims, to the December term, A. D. 1868.

THE BANK OF NEW ORLEANS *vs.* THE UNITED STATES.

To the honorable the judges of the United States Court of Claims:

Your petitioner, the Bank of New Orleans, a corporation chartered and existing under and by virtue of the laws of the State of Louisiana, respectfully represents that on the 17th day of April, A. D. 1862, your petitioner became the owner, by purchase, of sixteen thousand five hundred bales of cotton, situated in the counties of Perry, Dallas, Marengo, Wilcox, and Lowndes, in the State of Alabama. That said cotton was duly delivered to your petitioner by the party or parties from whom it was purchased, and continued thereafter to be in the possession of your petitioner.

168 Your petitioner further represents that, in the course of military operations conducted during the late rebellion, some portion of said cotton, so as aforesaid purchased by your petitioner, was burned or otherwise destroyed.

Your petitioner further represents that there remained of said cotton, in the possession of your petitioner, in the month of April, A. D. 1865, about nine thousand bales, and that said nine thousand bales, situated in the counties aforesaid, were seized and taken possession of by the agents of the United States as abandoned property.

Your petitioner further represents that said cotton, after such seizure, was duly delivered to the Treasury agents acting for and in behalf of the United States, and that said cotton, after its delivery to such Treasury agents, was sold by such agents, and the proceeds thereof duly paid into the Treasury of the United States.

Your petitioner further represents that it is not accurately advised as to the actual amount of the proceeds resulting from the sale of said cotton, so as aforesaid paid into the Treasury of the United States; but upon information and belief your petitioner alleges the same to have

169 been about the sum of two millions seven hundred thousand dollars; and that said sum was the net proceeds of said cotton; and that your petitioner is entitled to recover the same in this suit.

Your petitioner further represents that this suit is prosecuted under and in pursuance of an act of Congress of the United States, approved March 12th, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in the insurrectionary districts within the United States."

Your petitioner further avers that it has not, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the Government of the United States.

THE BANK OF NEW ORLEANS,
By C. CASE, *its Attorney.*

DISTRICT OF COLUMBIA,
City and County of Washington, ss:

Charles Case, being duly sworn, on his oath states that he is one of the attorneys for the above-named claimant. That no assignment or transfer of said claim or any part thereof or any interest therein has been made. That said claimant is entitled to the amount in said petition claimed from the United States after deducting all just
170 credits and offsets. That he believes the facts stated in said petition to be true.

CHAS. CASE.

Sworn to and subscribed before me this 19th day of August, 1868.
EDM. F. BROWN,
Commissioner of the Court of Claims.

Address of claimant, New Orleans, La.
" " " 's solicitor, Case & Rouse, New Orleans, La.

John J. Weed, Washington, D. C.

Entry at rules.—Appearance of the N. O. & Carrollton Railroad Co., G. T. Beauregar', and the other defendants to complainant's bill. September rules—Monday Septr. 6th, 1869.

U. S. circuit court.

CHAS. CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The defendants, the N. O. and Carrollton Railroad Company, G. T. Beauregard, and the other defendants, by their solicitors, L. E. Simonds & H'y C. Miller, esq'r's, have this day entered their appearance to complainant's bill, except the 4th National Bank of New York, Thos. P. May, & A. C. Graham.

171 *Entry at rules.—September rules—Monday, Septr. 6th,* 1869.

CHAS. CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The defendants herein, by their solicitors, Lea, Finney & Miller, have this day entered their appearance to complainant's bill, except the 4th National Bank of New York, Thos. P. May, and A. C. Graham.

Demurrer of G. T. Beauregard and others.—Filed Octo. 4th, 1869.

United States circuit court.

CHAS. CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The joint and several of G. T. Beauregard, Joseph Hernandez, G. W. Binder, Alexander Bonneval, and the New Orleans & Carrollton Railroad Company.

These defendants by protestation not confessing any of the matters

in and by said bill complained of to be true in manner and form as the same are therein set forth and alleged, do demur to the said bill,
172 and for causes of demurrer show that the said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree or give complainant any relief as against these defendants, wherefore and for divers other errors in said bill contained and appearing on the face thereof these defendants do demur thereto and humbly crave the judgement of this honorable court whether they are compelled or ought to make any further and other answer to the said bill; and they pray to be hence dismissed with their costs in this behalf sustained.

(Signed) L. E. SIMONDS,
" LEA, FINNEY & MILLER,
Solicitors.

Lea, Finney & Miller do hereby certify that, in their opinion, the demurrer herewith filed is well founded in point of law.

(Signed) LEA, FINNEY & MILLER.

The affidavit of these defendants to this demurrer is waived.

W'M W. KING,
For ROUSE,
Solicitor of Compl't.

Motion and order.—For time to set down demurrer for hearing.—Entered and filed Nov'r 12th, 1869.

173 In the United States circuit court, fifth circuit and district of Louisiana. In chancery.

CHA'S CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant, and upon suggestion that Tho's P. May, a defendant, residing in said district, has not been cited, it is ordered that the complainant have time until the first Monday in January, 1870, to set down the demurrer herein for hearing.

Alias subpœna in chancery.—To Thomas P. May.—Issued December 16th, 1869.

United States circuit court.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded, as you have heretofore been, to sum-

174 mon Thomas P. May, individually and as member of the firm of G. T. Beauregard, T. P. May, and A. C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of February, 1870, then and there to answer a bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and said Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon, how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 16th day of December, in the year of our Lord one thousand eight hundred and sixty-nine, and the 94th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court
175 on or before the first Monday of February, 1870, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk*.

Marshal's return on subpœna.

Received December 16th, 1869, by the U. S. marshal, and on the 18th day of the same month and year served a copy of the within subpœna in chancery on the within-named Thomas P. May, by delivering the same to him in person, at the office of Whitaker & Rice, No. 37 Camp street, in this city.

New Orleans, December 18th, 1869.

(Signed) H. FREDERICKS,
Dep. U. S. Marshal.

Motion and order.—Cause to be tried before circuit judge.—Entered & filed January 11th, 1870.

In the United States circuit court, fifth circuit and district of Louisiana.

CHA'S CASE, RECEIVER, &C., *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant, and upon suggesting that it is desired that this cause be tried by the circuit judge, it is ordered that the time for fixing this case be extended 10 days.

176 *Motion and order—Cause set down for argument on demurrer.—Extract from the minutes, January 21, 1870.*

Circuit court of the United States, fifth circuit and district of Louisiana, November term, 1869.

NEW ORLEANS, *Friday, Jan'ry 21st*, 1870.

Court met pursuant to adjournment.

Present, Hon. E. H. Durell, district judge.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant herein, it is ordered that this cause be set down for argument of the demurrer of defendants Monday, the 21st day of March next, at 11 a. m., and that defendants demurring be notified thereof.

Notice of trial of demurrer.—Issued January 21st, 1870.

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

You are hereby notified that the demurrers filed in this case
177 are assigned for argument for Monday, the 21st day of March, A. D. 1870, at 11 o'clock a. m.

By order of court.

Witness my hand and seal of said court, at New Orleans, this 21st day of Jan'ry, A. D. 1870.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

To LEA, FINNEY & MILLER, Esqrs.
L. E. SIMONDS, Esq.

Marshal's return.

Received January 22d, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within notice of trial on Lea, Finney & Miller, named herein, by delivering the same to H. C. Miller, a member of said firm, in person.

And on the 25th day of the same month and year served a copy of the within notice of trial on L. E. Simonds, named herein, by delivering the same to him in person.

New Orleans, Jan'y 25th, 1870.

(Signed) S. W. REED,
D'y U. S. Marshal.

Answer of the 4th National Bank of New York.—Filed February 3rd, 1870.

U. S. circuit court, 5th judicial circuit and district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

178 To the honorable the circuit court of the United States for the fifth circuit and district of Louisiana:

The answer of the Fourth National Bank of New York, one of the de-

fendants named in the above-entitled suit, to the complainant's bill therein filed, respectfully represents:

That it is true that the said bank acquired the interest of Augustus C. Graham in the property and in the partnership between G. T. Beauregard and Thomas P. May and the said Graham in the manner and at the dates set forth in the said bill of complaint.

That, having thus acquired the said property and interest in the said partnership, this respondent brought suit in this hon. court against the New Orleans and Carrollton Railroad Company, the said G. T. Beauregard, G. W. Binder, Alexander Bonneval, & others, to have the interest of said bank in the said property and partnership recognized, and for an account of the business of the partnership.

That these parties appeared to be in possession of the said property and claimed the same as owners thereof, denying altogether the
179 right of this respondent to any portion of the same.

That the United States of America appeared in answer to a call in warranty made by the said railroad company and other defendants in that suit, and also denied the right and title of this respondent to the said property and interest in the said partnership.

That upon the issues thus formed the parties to that suit went to trial, and there was judgment in favor of the defendants and dismissing the claim and suit of this respondent. From this judgment this respondent took an appeal to the Supreme Court of the United States, which was duly filed therein, and the said cause is now there pending on appeal, all of which facts will more fully appear by reference to the record of said suit, number 5359 of the docket of this hon. court.

That the said suit was instituted on or about the day of .

Now this respondent alleges that the issues and matters and things involved in that suit cannot be inquired into or litigated in this suit, so far as the parties to that suit are concerned; that the said
180 Beauregard, the said Binder and Bonneval and Hernandez, and the said New Orleans and Carrollton Railroad Company, who are parties to the present suit, were parties to that suit as well as the said Government of the United States. These parties are barred by the pendency of that suit from litigating the same matters in this suit.

The respondent further answering saith, that the said conveyance and transfer from the said A. C. Graham to the Fourth National Bank of New York was made as alleged in the complainant's bill in order to secure to the said bank the payment of the sum of fifty-five thousand four hundred and sixty dollars, with interest at seven per cent. from the day of , as more fully appears from the annexed certificate of said Charles Case, receiver of said First National Bank of New Orleans, that all of the said sum is still due and unpaid.

Respondent alleges that nothing was ever received by the said Fourth National Bank from any of the other property transferred by said Graham to said Fourth National Bank to secure the payment of the
181 above sum. That upon the payment of the amount above set forth the said Fourth National Bank will hold the other property and assets transferred to it by the said Graham for the benefit of whomsoever it may concern and subject to the orders of this hon. court.

This respondent further represents that the said Fourth National Bank of New York is very desirous of having a full and fair settlement with the said First National Bank, and with the receiver thereof, and for the purpose effecting the same is willing, after the various sales and transfers made by the said Thomas P. May, G. T. Beauregard, G. W. Binder, A. Bonneval, Hernandez, the New Orleans & Carrollton Railroad

Company, and the Government of the United States of the property in question shall have been declared null and void, that the property originally belonging to the said A. C. Graham and to the said partnership, betwen him and Beauregard and May, shall be sold, together with the lease of the railroad, and that a full and complete settlement shall be thus effected between the complainant & this respondent, such as this hon. court shall deem meet and proper to be made.

The Fourth National Bank of the city of New York.
(Signed) P. C. CALHOUN, *Pres't.*
" B. SEAMAN, *Cashier.*

(Sig'd) ELMORE & KING,
Solicitors for Resp't.

182 *Entry at rules.—Monday, February 7th*, 1870.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The Fourth National Bank of New York, one of the defendants herein, by their solicitors, Elmore & King, have filed on the 3rd instant their answer to complainant's bill.

Motion and order pro confesso taken as to T. P. May.—Extract from the minutes, February 28th, 1870.

In the U. S. circuit court, fifth circuit and district of Louisiana. In chancery.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant herein, and it appearing that Thomas P. May, one of the defendants herein, has been duly served with the process of subpœna herein, and that the usual delay granted him by law for answering, has expired, and that he
183 has failed and neglected to enter an appearance or file any answer, plea, or demurrer to complaintant's bill of complaint, it is ordered that the same be and is hereby taken pro confesso against said defendant, to the end that such decree may be made thereupon as shall be just, &c.

Continuance of demurrer.—Extract from the minutes, March 21, 1870.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

By consent of counsel, the demurrer in this case is continued till 2d May next at 11 a. m.

Notice of trial.—Issued April 26, 1870.

Circuit court of the United States for the fifth circuit and district of Louisiana.

CHA'S CASE, REC'R, &C., vs. G. T. BEAUREGARD ET AL. } No. 5931.

You are hereby notified that the demurrer in this case is assigned for trial for Monday, the 2d day of May, A. D. 1870, at 11 a. m.

By order of court.

184 Witness my hand and seal of the said court, at New Orleans, this 26th day of April, A. D. 1870.

(Signed) F. B. VINOT, *Dy Clerk.*

To L. E. SIMONDS, Esq.

Marshal's return on notice.

Received April 26th, 1870, by the U. S. marshal, and on the 29th day, same month and year, served copy of within notice on L. E. Simonds & Lea, Finney & Miller, by delivering the same to H. C. Miller in person.

New Orleans, April 27th, 1870.

(Signed) S. W. REED, *Dy U. S. Marshal.*

Order on demurrer.—Extract from the minutes, May 4th, 1870.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, vs. G. T. BEAUREGARD ET AL. } No. 5931.

For reasons orall assigned by the court, it is ordered that the demurrer to the bill be sustained, the right of the complainant to amend his bill being reserved.

185 *Amended bill.—Filed June 4th, 1870.*

U. S. circuit court, circuit and district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, vs. G. T. BEAUREGARD ET AL. } No. 5931.

To the honorable the circuit court of the United States for the fifth circuit & district of Louisiana, holding sessions at New Orleans. In chancery:

Humbly complaining unto this honorable court, your orator, Charles Case, a citizen of the State of Indiana, and also receiver of the First National Bank of New Orleans, a company duly incorporated under the laws of the United States, and located in the city of New Orleans, having been duly appointed receiver as aforesaid under the laws of the

United States, and as such authorized to bring this suit before this honorable court against Gustave T. Beauregard, Thomas P. May, who are both citizens of the State of Louisiana, residing in this district, and Augustus C. Graham, who is a citizen of the State of New York,
186 and also against Joseph Hernandez and G. W. Binder and Alexander Bonneval, who are also citizens of the State of Louisiana, residing in this district, and the New Orleans and Carrollton Railroad Company, a company duly incorporated by the laws of the State of Louisiana, and domiciliated and located in this district, and also against the Fourth National Bank of New York, a company duly incorporated under the laws of the United States, and domiciliated and located in the city of New York, by this his bill of complaint, amended pursuant to the order of this court in the cause made on the fourth day of May, A. D. 1870, respectfully sheweth:

That on or about the 12th day of April, A. D. 1866, the said G. T. Beauregard leased from the said New Orleans and Carrollton Railroad Company the railroad belonging to the said company, together with real estate belonging to said company, the rolling-stock thereof, the movable property of the said company, and all the rights, privileges, and franchises of the said company for and during the term of twenty-five years, in the manner and form more fully set forth in the Exhibit A, which is a copy of the said lease, and which is annexed to your
187 orator's original bill, and also hereto as a part of this bill.

That although the said lease was made in the name of said Beauregard, it was so made with the view of a future partnership for the carrying on of the said business.

That on or about the 18th day of April, 1866, the said Beauregard entered into a contract with the said T. P. May and the said A. C. Graham, such as is more fully set forth in the copy of the said contract which is annexed to your orator's original bill and marked "Exhibit B," and also hereto as part of this bill.

Your orator alleges that under the said contract of co-partnership the said parties conducted the business for which it was intended; that the railroad was remodelled, refitted, and changed from steam-cars to horse-cars, requiring heavy outlays, and many other expenses was incurred by said partnership in their said business.

That in addition to the foregoing expenses the partnership, in order the more successfully to carry on the said business, made large purchases of real estate, to wit:

1st. That purchased from William C. Raymond, by act before
188 Amadee Ducatel, notary public in the parish of Orleans, on the fifth day of May, 1866, consisting of a square of ground bounded by Napoleon avenue, Berlin, Nayades, and Apollo streets, in the city of Jefferson, with all of the improvements thereon, as is more fully described by the copy of said act which is annexed to your orator's original bill and marked "Exhibit C," and also hereto annexed as part of this bill.

2d. That purchased from Samuel A. Kohn, by act before the same notary, dated April 30th, 1866, consisting of a square of ground in the city of Jefferson, bounded by Nayades, Apollo, Milan, and Berlin streets, as is more fully set forth in the copy of said act marked "Exhibit D," which is annexed to your orator's original bill, and also hereto as part of this bill.

3rd. That purchased from the said New Orleans and Carrollton Railroad Company, by act before Selim Magner, notary public in the parish of Orleans, on the 29th day of June, 1866, consisting of a triangle of ground in the town of Carrollton, in the parish of Jefferson, bounded

189 by Levee street, Carrollton avenue, and First street, as is more fully described in the act marked "Exhibit E," which is annexed to your orator's original bill, and also hereto as part of this bill.

The said property was purchased in the name of Beauregard alone, but was in fact purchased for the partnership, was paid for out of the partnership funds, and belongs to the said partnership.

4th. That purchased from the New Orleans and Carrollton Railroad Company known as the "Horse Station," situated in the first district of New Orleans, in the square bounded by S't Charles, Felicity, Apollo (now called Carondelet), and Polymnia streets, consisting of seven lots, as is more fully and particularly described in the copy of the act of conveyance passed before Selim Magner, notary public in New Orleans, on the 15th day of January, 1867, and which is annexed to your orator's original bill and marked "F," and also hereto as part of this bill. The said purchase was made in the individual name of said Beauregard, but was in fact purchased for the partnership, was paid for by the partnership, and belonged to the partnership.

5th. In addition to the property described as purchased by the
190 partnership, the said firm, by their lease from the said New Orleans and Carrollton Railroad Company, were entitled to the use of a square of ground situated on the corner of Napoleon avenue and S't Charles streets, in the parish of Jefferson, on which they made and erected extensive and valuable improvements which belonged to the said firm.

Your orator alleges that all or nearly all the money paid by the said Beauregard, Graham, and May for the purchase of the said lease, for the improvements and alterations of the railroad, and for the equipment and furnishing of stock and other necessary materials, and for the purchase of the real property above described and making improvements thereon as well as on the property leased, in fact all or nearly all the money expended by the said partnership in the said business, was obtained from the before-mentioned First National Bank of New Orleans, and that the said partnership were justly indebted to said bank therefor, none of which indebtedness has ever been paid.

That the said partnership opened an account with the said bank in the name of the said G. T. Beauregard, lessee.

191 That although the account stood in this manner upon the books of the bank, it was in reality the account of the said partnership, for which the partnership was justly and legally liable. A copy of the said account, which is annexed to your orator's original bill, marked "Exhibit G," and also hereto as part of this bill.

That the balance which appears to be still due by said account is only seventy-two thousand and eight $\frac{8}{100}$ dollars ($72,008\frac{8}{100}$); but that is not the real amount due by said partnership to said bank, the true amount of the indebtedness of said firm to the said bank being two hundred and thirty-seven thousand and eight $\frac{8}{100}$ ($237,008\frac{8}{100}$) dollars, and interest, as hereinafter more fully and particularly set forth.

Your orator alleges that the First National Bank of New Orleans was incorporated and was organized for business about the 28th day of November, 1864.

That the said T. P. May and the said A. C. Graham were leading and active founders of the said bank.

That the said bank was organized by the election of B. F.
192 Flanders as president, and A. C. Graham, cashier.

That the said T. P. May was one of the prominent and active directors of the bank from the time of its commencement.

That the said A. C. Graham was elected president of said bank July 12th, 1864, and continued to act as president of the said bank until the 12th day of July, 1866, at which time he absented himself, going to the city of New York. Upon his leaving, the said T. P. May was chosen president, to act during the absence of said Graham. The latter not returning again to New Orleans, the said May was elected president on or about the 6th day of October, 1866. He continued to act in that capacity until about the 8th day of April, 1867, at which time David Burke Forbes, the former vice-president of the bank, was elected president, and continued so to act until the bank was closed by proceedings by the Government of the United States.

That the said T. P. May was a director of the bank, and at all times during its existence exercised a leading influence and control over the bank and its administration.

193 That while the said T. P. May was acting as president of the bank, the aforesaid account of the partnership of Beauregard, Graham, and May, which stood on the books of the bank in the name of "G. T. Beauregard, lessee," being largely overdrawn, in order to settle the overdraft nominally on the books of the bank, he, said May, drew, on or about the 14th day of September, 1866, a promissory note in the name of the said Beauregard, lessee, payable to the First National Bank of New Orleans on demand for the sum of forty thousand dollars.

That the said May drew the said note in the name of the said Beauregard, lessee, under a power of attorney from Beauregard which fully authorized him to do so, and to bind the said Beauregard thereby.

That he caused the amount of said note to be credited to the said account of said "Beauregard, lessee," which was, in fact, as herein previously stated, the account of the said partnership, and the amount thereof was used for the benefit of said partnership as hereinbefore

194 stated. That no attempts were ever made to use or collect the said note by the said May or his successors in office. It remained in the possession of the bank until the final closing up thereof, and is now in the possession of your orator as receiver. The said note which is annexed to your orator's original bill, and also hereto as part of this bill.

Your orator further alleges that the said account of Beauregard, lessee, being again largely overdrawn, to wit: About one hundred and twenty-five thousand ($125,000) dollars, the said T. P. May, on or about the 19th day of March, 1867, drew an instrument purporting to be a bill of exchange in favor of the said First National Bank, payable at forty-five days after sight, on the said A. C. Graham, in New York, for the sum of one hundred and twenty-five thousand ($125,000) dollars, and caused the same amount to be placed to the credit of the said account of Beauregard, lessee.

That the said bill of exchange was never stamped; was never forwarded for presentation, for acceptance, or collection, but re-

195 mained in the bank until it came to the possession of your orator as receiver thereof. The said bill of exchange which is annexed to your orator's original bill, and also hereto, as part of this bill.

Your orator alleges that both of the preceding mentioned sums were taken from the bank by the said May, in violation of his duty as an officer of the said bank, and in fraud of the rights of the bank.

That the money thus obtained was used for the benefit of the partnership existing between him and Beauregard and Graham, in purchasing property, paying for the lease, and in carrying on the business of the partnership, and that all of the said partners are liable therefor in sol-

ido with the interest on the same from the date of the conversion of the said money to their use, to wit, on the amount of said note of forty thousand dollars from the said 14th day of September, 1866, and on the one hundred and twenty-five thousand dollars from the 19th day of March, 1867, and on the seventy-two thousand and eight $\frac{59}{100}$ dollars from the 25th day of April, 1867.

196 Your orator further avers that for the payment of the above sum the said First National Bank had a privilege and lien upon all the property of the said partnership, in preference to the individual creditors of any one of the said partners.

That the said property could not be legally conveyed away in payment of the individual debts of any one the partners, or appropriated to the use of any one of the partners, so as to defeat the rights of the bank against said partnership property.

Your orator avers that John Jay Knox, an officer of the Government of the United States, and special agent of the Treasury Department of said government, duly authorized and commissioned therefor, took possession of the said First National Bank, its books, and all its assets, and closed the same as an acting bank on or about the 13th day of May, 1867.

That he thus became aware, and the said government through him as their agent, of the said indebtedness of the said partnership of Beauregard, Graham, and May to the said bank, and was also aware of

197 the true origin of said indebtedness and of the fact that the business of the said partnership was mainly carried on by the money of the bank, and that the funds of the bank invested in the property of the partnership had not been paid.

That notwithstanding this knowledge the said Government of the United States, through John Jay Knox, its agent, induced the said T. P. May to transfer his interest in said partnership to said government, as appears by act 14th May, 1867, before A. Hero, notary public, annexed as Exhibit N, and further on the 16th May more formally to transfer and convey to the said government the interest owned by said T. P. May and the said A. C. Graham in the said partnership and all its property in payment of an alleged indebtedness due by said May individually and personally to the said government, as more fully appears from the copy of the act passed before Andrew Hero, j'r, a notary public in New Orleans, dated the 16th day of May, 1867, which is annexed to your orator's original bill and also hereto as part of this bill and marked "Exhibit H."

198 Your orator is informed and so charges that this pretended conveyance by said May of the interest of said Graham to the said government was made without any legal authority from said Graham to said May, and was further in violation of and a fraud upon his, Graham's, rights, and is consequently null and void.

Your orator further charges that even if May was authorized to transfer Graham's interest, which is denied, that still the conveyance made by him to pay his individual debts in both of the preceeding acts, was illegal and was a fraud upon the rights of the First National Bank *Bank* as a creditor of the partnership.

Your orator further alleges that the Government of the United States having by the illegal means above set forth gotten possession of the interests of the said May and Graham in the said partnership and property thereof, did, by act passed before Gustave Le Gardeur, j'r, notary public in New Orleans, on the 21st day of August, 1867 (the said G. T. Beauregard intervening and becoming a party thereto), transfer

199 and convey the interests of May and Graham, acquired as afore said from T. P. May, to the said Alexander Bonneval, G. W. Binder, and Joseph Hernandez, a copy of said act which is annexed to your orator's original bill, and also hereto as part of this bill and marked "Exhibit I."

That subsequently, to wit, on or about the 31st day of October, 1867, the said United States Government entered into an agreement with the said Bonneval, Binder, and Hernandez, by which the preceeding act was annulled and a new conveyance made by the said government of the said property to the said parties, as more fully appears from the copies of two contracts dated October 31st, 1867, which are annexed to your orator's original bill, and also hereto as part of this bill and marked "Exhibits J & K."

Your orator further alleges that the said Bonneval and Binder and Hernandez and the said Beauregard entered into an agreement on or about the 15th of October, 1867, with the said New Orleans and Carrollton Railroad Company by which the said lease was surrendered

200 to the said company, and all the property belonging to the said partnership of Beauregard, Graham, and May. This was done in consideration of the said company assuming all the debts and liabilities of the said partnership and growing out of the said lease, and also giving four thousand shares of the capital stock of said railroad company to said Beauregard, Bonneval, Binder, and Hernandez, one-third thereof to the said Beauregard, and the remaining two thirds thereof to the said Bonneval, Binder, and Hernandez, all of which more fully appears from the copy of an act passed before Selim Magner, a notary public in New Orleans, on the 15th day of October, 1867, which is annexed to your orator's original bill, and also hereto as part of this bill, and marked "Exhibit L."

Now, your orator alleges and charges the fact to be that at and before the time of the said pretended transfers and conveyances by the said Thomas P. May to the United States of his and said Augustus C. Graham's interests in and to the New Orleans and Carrollton Rail-

201 road, and the property of the said partnership of the said May, Graham, and Beauregard, each of said partners were largely indebted, without means, and in a state of insolvency, and have ever since been and still are insolvent, so that a suit at law and the recovery of a judgment against them or either of them would afford your orator no relief, because neither of said partners have or had since the date of the pretended transfer of said partnership property any property whatever upon which your orator could levy an execution at law or seize for the satisfaction of the said debt due to said bank.

And your orator alleges and so charges that at the times at which all of the before-mentioned acts were passed and conveyances and transfers made, the said Bonneval and Binder and Hernandez, and the said Beauregard and the said New Orleans and Carrollton Railroad Company, and the said Government of the United States, and the said T. P. May, all were well aware of the indebtedness of the said partnership of Beau-

regard, Graham, and May, and also of the fact that the money of

202 the said First National Bank had paid for the property conveyed without any reimbursement having been made to the bank, and also of the fact of said insolvency of the said Beauregard, Graham, and May, individually, and that such insolvency existed at and before the time of said pretended transfers by said May to the United States, and each and all of said parties, both vendors and vendees, well knew that

all of said pretended sales and transfers were in fraud of the creditors of said partnership and in fraud of the rights of your orator.

Under these circumstances, your orator charges that said conveyances and transfers were illegal and fraudulent, and that all of the beforementioned conveyances and transfers of the property of the said partnership, or of any separate interest of the partners in the partnership, are null and void, and should be so decreed by this honorable court, and the said property be decreed to be liable for the debt due to the said First National Bank.

Your orator further sheweth and charges the fact to be that the said Bell, who pretended to authority to transfer and sell the supposed
203 rights of the United States, acquired by the said pretended conveyance by May and Graham, to the said Bonneval, Binder, and Hernandez, was without any authority in law to make said sale and conveyance; and that said pretended sale and conveyance of the supposed rights of the United States was made without pursuing any of the formalities of law required in the sale of property belonging to the United States, and the pretended affirmance of said sale and conveyance by Edward Jordan, solicitor of the U. S. Treasury, was without authority in law, and that all of said acts and pretended sales by the said Bell and said Jordan were therefore null and void; and that they were each without authority and that the formalities of law were not complied with was well known to said Bonneval, Binder, and Hernandez and the New Orleans and Carrollton Railroad Company at the time of their acceptance of the transfers thereof to them.

And your orator further sheweth and charges the fact to be that by the said act passed the 15th day of October, 1867, between the said Carrollton Railroad Company and said Beauregard, Binder and Her-
204 nandez and Bonneval, and known as the act of fusion, and hereto annexed as Exhibit L, the said New Orleans and Carrollton Railroad Company assumed and bound itself to pay all indebtedness of the said Beauregard, Bonneval, Binder, and Hernandez, on account of said railroad, except the notes given by Bonneval, Binder, and Hernandez under said act of August 21st, 1867, and thereby the said Carrollton Railroad Company assumed the said debt due to said bank by said partnership and agreed to pay the same.

Your orator further alleges that on or about the 8th day of May, 1867, the said A. C. Graham transferred and conveyed his interest in the said partnership of Beauregard, Graham and May to the said Fourth National Bank of New York, as more fully appears from the copy of the act which is annexed to your orator's original bill, and also hereto as part of this bill, and marked "Exhibit M."

That, although the said instrument appears on its face to be an absolute conveyance of his, Graham's, interest, yet, in truth and in fact, it was only made for the purpose of indemnifying the said Fourth National
205 Bank against certain liabilities which that bank had contracted on account of and for the benefit of the said First National Bank of New Orleans.

Your orator cannot state the amount of the indebtedness of the said First National Bank to the Fourth National Bank growing out of the payment of said liabilities by the said Fourth National Bank, because the amount depends or may depend upon what has been or may be realized from other securities in the hands of the said Fourth National Bank, and for which said Graham had given his personal guarantee to said Fourth National Bank.

Inasmuch as this conveyance was made for the benefit of and in the

interest of the said First National Bank, your orator does not seek the avoidance thereof so far as it can be enforced with due regard to the rights of your orator as a creditor of said copartnership of said May, Beauregard and Graham, but your orator expressly reserves the right to contest the same should the interests he represents as receiver make it necessary to do so hereafter.

206 Your orator alleges that the said sum of two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars, with interest as aforesaid, is still due and unpaid by the said Beauregard, Graham, and May, and that they neglect and refuse to pay the same, and that the said New Orleans and Carrollton Railroad Company have also neglected and refused and doth still neglect and refuse to pay the same.

That the said Beauregard, and Bonneval, and Binder, and Hernandez, and the New Orleans and Carrollton Railroad Company, refuse to permit the property of the said partnership, now illegally in their hands, to be applied to the payment of the debts of the said partnership; and further, there can be no settlement with the said Fourth National Bank without a sale of the property, and that these acts and doings of the defendants in the premises, as hereinbefore set forth, are contrary to equity and good faith.

In consideration whereof, and forasmuch as your orator is entirely remediless in the premises according to the strictness of the rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable:

207 To the end therefore that the said defendants may be ordered to do what is just and proper in the premises, and the necessary decrees therefor may be obtained, and that said G. T. Beauregard, A. C. Graham, and Thomas P. May, and the New Orleans and Carrollton Railroad Company be decreed in solido to pay your orator as receiver of the said First National Bank of New Orleans, as aforesaid, the said sum of two hundred and thirty-seven thousand and eight $\frac{89}{100}$ (237,008.89) dollars, with interest, as hereinbefore set forth.

And that the various acts of sale, transfer, and conveyance of the partnership property of the said partnership of said Beauregard, Graham, and May, hereinbefore described, be declared null and void, to wit: The transfer made by said T. P. May to the United States, on the 14th of May, 1867, before A. Hero, notary public; also the act made before the same notary on the 16th of May, 1867, by the said T. P. May, transferring the interest of himself and A. C. Graham to the United States.

208 Also the transfer and conveyance made by the United States to Bonneval, Binder, and Hernandez, by act passed before G. Le Gardeur, j'r, notary public, on the 21st day of August, 1867.

Also the acts made on the 31st of October, 1867, between the United States and Bonneval and Binder and Hernandez.

Also the act between the New Orleans and Carrollton Railroad Company and said G. T. Beauregard, and A. Bonneval, and G. W. Binder, and Joseph Hernandez, called the act of fusion, passed before Selim Magner, notary public, on the 15th day of October, 1867.

That these acts be declared specially null and void as against the rights of your orator, and that the property therein conveyed and transferred be decreed to be liable to the payment of the amount due to the said First National Bank of New Orleans.

And further, that the marshal of this honorable court be ordered to seize and sell the same in due course of law.

And that after the payment of the amount due to your orator as re-

ceiver, &c., to the amount of the claim of the First National Bank of New Orleans, the balance of the proceeds be disposed of as the law may direct.

And that your orator may have such other and further relief in
209 the premises as the nature of the case requires.

May it please this honorable court to grant unto your orator the most gracious writ of subpœna of the United States of America to be directed to the said G. T. Beauregard, T. P. May, and A. C. Graham, composing a partnership, individually and as members of the firm.

Also to the New Orleans and Carrollton Railroad Company, represented by the president thereof.

Also to Alexander Bonneval, G. W. Binder, and Joseph Hernandez.

Also to the Fourth National Bank of New York, represented by P. C. Calhoun, the president thereof, commanding them and each of them at a certain day to appear before this honorable court, and then and there to answer all and singular the premises, and to perform and abide such order and decree therein as to this honorable court shall seem meet, and your orator shall ever pray, &c., &c.

Your orator further represents that under the aforesaid act of fusion between the said New Orleans and Carrollton Railroad Company and G. T. Beauregard, and Alexander Bonneval, and G. W. Binder,
210 and Joseph Hernandez, the before-mentioned four thousand shares of the capital stock of the said railroad company were given to the said Beauregard, Bonneval, Binder, and Hernandez in lieu of the property belonging to the said partnership of Beauregard, Graham, and May, and that complainant fears that the said stock may be transferred by the said parties to third persons, greatly to the injury and embarrassment of the rights of complainant as receiver as aforesaid.

He therefore prays that the said Beauregard, and Bonneval, and Binder, and Hernandez be enjoined by order of this honorable court and restrained from transferring, alienating, or encumbering the said stock or any part thereof in any manner, to the prejudice of the rights of the complainant; and that the said New Orleans and Carrollton Railroad Company be also enjoined from permitting or recognizing in any manner any such transfer of said stock to the prejudice of the complainant's rights as herein as aforesaid, and for all other relief in the premises, &c., &c.

(Signed) J. D. ROUSE,
(") P. H. MORGAN,
Sol's for Complainant.

211 *Agreement.—Filed June 30th*, 1870.

In U. S. circuit court, 5th circuit, and district of Louisiana. In chancery.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

It is agreed that defendants herein will enter their appearance to complainant's amended bill, and shall have until September 1st, 1870, to plead, answer, or demur thereto, but in case of emergency either party

may take testimony prior to that time, the same as if the case was at issue.

(Signed) J. D. ROUSE, *Sol. for Compl't.*
(") LEA, FINNEY & MILLER,
Att'ys for Defendants, The N. O. & Carrollton R. R. Co., G. T. Beauregard, A. Bonneval, Joseph Hernandez, & G. Binder.

In the above cause I hereby consent that the defendants may have until and including the first Saturday in October to answer the amended bill.

August 24th, 1870
(Signed) C. CASE, *Receiver, &c.*

212 *Subpœna in chancery on amended bill to Thomas P. May, issued Sept'r 26th, 1870.*

United States circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans
vs.
G. T. BEAUREGARD ET ALS. } No. 5931.

UNITED STATES OF AMERICA.

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded to summon Thomas P. May, individually and as member of the firm of G. T. Beauregard, T. P. May, & A. C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of November, 1870, then and there to answer an amended bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and said Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ, with
213 your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 26th day of September, in the year of our Lord one thousand eight hundred and seventy, and the 95th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk.*
By F. B. VINOT,
Dy Clerk.

The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court on or before the first Monday of November, 1870, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk.*
By F. B. VINOT,
Dy Clerk.

Marshal's return on subpœna.

Received September 26th, 1870, by the U. S. marshal, and after diligent search and inquiry, Thomas P. May, esqr., defendant named within, could not be found before the return hereof.

New Orleans, Nov'r 7th, 1870.

(Signed) GUS. HOLLANDER,
Dy U. S. Marshal.

214 *Answer of G. T. Beauregard.—Filed Oct'r 19th, 1870.*

United States circuit court.

CHARLES CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS.
vs.
GUSTAVE T. BEAUREGARD ET ALS. } No. 5931.

The answer of Gustave T. Beauregard, one of the defendants herein, to the original and amended bill of complaint of Charles Case, receiver of the First National Bank of New Orleans:

This defendant, Gustave T. Beauregard, domiciled in New Orleans, now and at all times hereafter reserving to himself all manner of benefit and advantage to himself of the many errors and insufficienc'es in said bill contained, for answer thereunto, or unto so much as this defendant is advised is material for him to make answers unto, says:

He admits that said Case is receiver of said bank.

He admits that on the 12th day of April, 1866, this defendant did lease from the New Orleans and Carrollton Railroad Company the railroad and other property appertaining thereto, as the same more
215 fully appears by reference to the act of lease filed by complainant as Exhibit A, to which reference is made as part hereof.

This defendant admits that said lease was made in the name of himself for the benefit of the partnership hereinafter referred to; that on the 18th of April, 1866, a contract was entered into by said T. P. May, Augustus C. Graham, and this defendant for the conducting of said railroad under said lease, by which this defendant was to manage said road at a salary of five thousand dollars per annum, to have no share of the profits made or losses or debts incurred in said enterprise until the reimbursement to said May and Graham of the capital stipulated in said act to be furnished by them, with interest thereon, as shown by said contract, copy whereof is filed by complainant as Exhibit B, to which reference is made as part hereof; and this defendant admits that, as restricted, modified, and subject to the terms and stipulations thereof, said contract was a partnership, and under it the business thereof was conducted, the railroad remodelled, changed from steam to horse-cars, and heavy outlays were incurred by said partnership.

This defendant admits the purchases set forth in complainant's
216 bill, to wit, that from W. C. Raymond, of date 5th May, 1866, that from Samuel A. Kohn, that from the New Orleans and Carrollton Railroad Company, of date the 29th of June, 1866, and that from said company of date the 15th January, 1867, as appears from the exhibits C, D, E, & F, filed with complainant's bill, referred to as part hereof. He admits that said purchases were made for said partnership, and paid for with its funds; he further admits that by said lease said

partnership was entitled to the use of a square of ground, corner of S't Charles street and Napoleon avenue, on which said partnership made valuable improvements, but he avers that by the terms of said lease said improvements were to revert to said company at the expiration of said lease without costs to said lessors.

This defendant avers that said partnership kept but one bank-account, that kept with said bank; that there was expended by said partnership from and out of its own proper funds, prior to September 6th, 1866, for the purchase of said lease, the improvements and alteration of said railroad, for the equipment and furnishing of stock and other necessary materials, for the purchase of the real property above described, for improvements on it, and for other purposes connected
217 with said partnership business, a large amount of money, no portion of which funds were derived from said bank, and the bulk of said proper funds were deposited with and held by said bank, and by it were disbursed to said partnership upon the checks of this defendant as lessee, from time to time, as in the ordinary course of account between the bank and its customer, and a statement of the funds so expended and the objects of said expenditures is filed with the answer of his co-defendant as Schedule No. 1, to which reference is craved.

This defendant further avers that, to facilitate said May & Graham in furnishing the money stipulated by said contract, and at their special instance and request, it was provided therein that this defendant, as lessee, should deposit the funds and keep the account of said partnership in said bank, which was done by this defendant, as lessee, and this defendant was given to understand by said May and Graham, and did understand, that he, as lessee, should check upon said bank for the wants of said partnership, and that proper business arrangements would be made by them, said May and Graham, to the end that
218 the necessary funds should be provided by them and put to the credit of said lessee in said bank to meet the checks so drawn; and in this mode the stipulations in said contract relative to the furnishing of funds would be fulfilled by said May and Graham, through and by said business arrangements to be by them effected without any personal liability or obligation of this defendant for the money paid by said bank upon said checks. This defendant further avers that, during the existence of said partnership, this defendant only received his said salary, and the partnership made no profits.

This defendant further avers that the stipulations in said act of partnership relative to the furnishing of said money requisite therefore by said May and Graham to the management of said road by this defendant, as lessee, for a fixed salary for his personal services, and in respect to the period when, according to said contract, his participation in the profits and liability for the debts of said partnership was to commence, and the actual pecuniary condition of said partnership was at all times well known to said bank through some of its executive and administrative officers; that save and except the understand-
219 ing aforesaid and the bare presentation and payment of said checks at the counter of the bank, no intercourse or negotiation of any kind or nature relative to said checks or their payment, or of or concerning the same, ever took place between this defendant and the officers of said bank or any of them.

This defendant admits and avers that, in the absence of any such negotiation or intercourse, save as aforesaid, and with such knowledge on the part of said bank, there was obtained from said bank at various times subsequent to the 6th of September, 1866, for said partnership,

upon the checks of this defendant, as lessee, drawn by him in accordance with the aforesaid understanding, the sum of seventy-two thousand and eight $\frac{50}{100}$ dollars, being the balance of account shown by Exhibit G, filed with complainant's bill, and this defendant admits that no part of said balance has been paid.

Defendant avers that on the 14th September, 1866, said bank entered to the credit of this defendant, as lessee, the sum of forty thousand dollars, and on the 19th March, 1867, said bank entered to the credit of said lessee the sum of one hundred and twenty-five
220 thousand dollars, and this defendant admits and aver' that, in the absence any such negotiations or intercourse, save as aforesaid, and with such knowledge on the part of said bank, there was obtained under said circumstances, from said bank, at various times subsequent to said September 6th, 1867, for said partnership, upon the checks drawn by this defendant, as lessee, in accordance with the aforesaid understanding, the amount of the said two credits so entered by said bank to his credit.

This defendant admits and avers the fact to be that a part of the money expended by said partnership in its business and for its purposes, that is that part expended between the 6th September, 1866, and 11th May, 1867, consisted of the proper funds of said partnership, no portion of which was derived from said bank, and of the aforesaid $72,008\frac{50}{100}$, and of the amount of said two credits obtained from said bank in the mode and under the circumstances above stated and set forth, and a schedule showing that part expended by the said partnership between the 6th September, 1866, and 11th May, 1867, the sources from whence derived and the objects of said expenditure, is filed with the answer of
221 his co-defendants, marked "No. 2," to which this defendant craves reference as part hereof; and this defendant denies that except as stated and explained any portion of the money expended by said partnership was obtained from said bank; and this defendant submits to the court the question of indebtedness arising in the state of facts herein set forth, and whether they warrant the conclusion stated in complainant's bill, and he denies that he is or ever was indebted to the complainant or the bank he represents.

This defendant admits that said account G, embracing as it does said two credits entered by said bank to the credit of this defendant as lessee, and the checks drawn in accordance with said understanding and paid by said bank under the circumstances herein stated, is the account opened by this defendant as lessee for said partnership. This defendant admits that said bank was incorporated and organized about the 28th November, 1864, that May and Graham were active and leading founders of said bank, that B. F. Flanders was elected president, and A. C. Graham as cashier; that said May was a prominent director, that said Graham was elected president of said bank on the 12th of July,
222 1864, and continued so to act until 12th July, 1866, when he absented himself, and upon leaving, T. P. May was chosen president; that Graham not again returning, May was elected president on or about the 12th October, 1866, that he continued so to act till the 8th of April, 1867, when D. B. Forbes, the former vice-president, was elected president and continued so to act until the bank was closed by proceedings of the Government of the United States; that said May at all times exercised an influence over said bank and its administration which this defendant believes to have been leading.

This defendant further avers and admits the fact to be, and not otherwise, that while said May was acting as president of said bank, and

owing to the checks drawn by this defendant as lessee under the aforesaid circumstances hereinbefore set forth, and owing to the fact without any such negotiation or intercourse between said bank and this defendant as hereinbefore set forth, save as aforesaid, and with the aforesaid knowledge on the part of the bank, hereinbefore set forth, it paid said checks; that owing to said causes and under such circumstances said account of said defendant as lessee with said bank did become
223 and was overdrawn on the 15th September, 1866.

This defendant admits the facts to be, and not otherwise, that on said date said May did hold a power of attorney from this defendant authorizing him to issue promissory notes for the debts of his principal, and only for his principal's debts; that holding such power said May did, on or about the 14th September, draw a promissory note in the name of this defendant, as lessee, payable to the 1st National Bank of New Orleans on demand, for forty thousand dollars; this defendant admits and avers the facts to be that on said 15th September, 1866, without any agency of this defendant to procure the entry of the aforesaid credit of $40,000.00, in respect thereto said bank did enter to the credit of this defendant as lessee the aforesaid credit of $40,000.00, and this defendant believes that it was by and through the action of said May in that behalf that said bank entered said credit; save as aforesaid this defendant cannot set forth as to his belief or otherwise whether said May caused said note to be credited by said bank to said account, and this defendant save as
224 aforesaid cannot state as to his belief or otherwise whether said note was drawn to settle said account nominally, and this defendant submits to the court whether under the facts stated said power authorized said May to draw said note, which he denies. This defendant believes it to be true that no attempts to collect said note were made; that it remained in the bank's possession until the closing up thereof, is now in complainant's possession, and is annexed to his bill.

This defendant admits and avers that owing to the checks drawn by himself, as lessee, under the aforesaid understanding with said May and Graham, hereinbefore set forth, and that with the knowledge aforesaid on the part of said bank of the facts herein charged as in its knowledge, and without any negotiations or intercourse between this defendant and said bank save as aforesaid, the bank paid such checks; that owing to said causes said account of this defendant, as lessee, became and was overdrawn on the 19th March, 1867. Defendant admits that on said date said May, holding from said Graham a power of attorney
225 which fully authorized him to draw the bill hereinafter spoken of, as appears from said power filed with the answer as Exhibit E, did draw a bill of exchange upon A. C. Graham for $125,000.00, payable forty-five days after sight, in favor of said bank; this defendant further admits that on said 19th March, 1867, said bank did enter to the credit of said account one hundred and twenty-five thousand dollars, and this defendant believes it to be true that it was by and through said May's action in that behalf that said bank entered said credit.

This defendant believes it to be true that said bill, though delivered to said bank, was never stamped or forwarded for presentation or acceptance by said bank, but remained in its possession until it came into complainant's possession, and is annexed to his bill.

This defendant submits to the court whether under the facts stated said sums of $40,000.00 and $125,000.00 were taken from said bank by said May in violation of his duty and in fraud as in said bill alleged.

This defendant avers and maintains that by the acts of sale, transfer, and conveyance by Thomas P. May to the United States, of date

226 the 14th of May and 16th of May, 1867, passed before A. Hero, notary, filed with complainant's bill as Exhibit N & H, to which reference is craved, said United States acquired a perfect, legal, and valid title to the property the subject of and conveyed by said acts; that to said property Joseph Hernandez, Alexander Bonneval, and George Binder acquired a perfect, legal, and valid title by the acts of sale, assignments, and conveyance from said United States, of date the 21st August, 1867, and 31st October, 1867, filed with complainant's bill as Exhibits I, J, and K, and to which reference is craved; and the New Orleans and Carrollton Railroad Company, by the acts of date the 15th October, 1867, passed before S. Magner, notary, filed with complainant's bill as Exhibit L, and to which reference is craved, acquired a perfect, legal, and valid title to all the property acquired by said partnership, embracing all the property acquired by the United States, and by said Hernandez, Bonneval, & Binder, under the various acts aforesaid, and this defendant denies that the complainant, or the bank he represents, has any right, claim, or demand of any nature whatsoever upon said property.

227 This defendant avers that prior to *to* the instituting of this suit, he had sold and parted with all the stock acquired by him under the terms of said act of 15th Oct., 1867, for a valuable consideration to him paid therefor by the purchasers thereof.

This defendant admits that John Jay Knox, as agent of the Treasury Department, took possession of said bank, its assets, closed the same as an acting bank, about the 13th May, 1867. This defendant believes and admits that said Knox became aware of said account of this defendant as lessee, of said balance; that said bank, with the knowledge aforesaid of the facts charged herein to have been in its knowledge, and without any intercourse between said bank and this defendant, save as aforesaid, had paid upon his checks as lessee aforesaid the amount of said balance and of said credits, and said Knox also became aware that said amounts had been used in the business of said partnership; save as aforesaid and as hereinafter stated, this defendant cannot set forth, as to his belief or otherwise, whether said Knox or the United States

228 had any knowledge of the dealings between said bank and said partnership.

This defendant avers that besides said money obtained from said bank, a part of the capital of said partnership was furnished; he believes and avers that all of said capital furnished was the means of said May; that on said 16th May, 1867, said Graham was indebted to said May in settlement of said partnership and of its accounts; that on said date said partnership was indebted in the sum of one hundred and seventeen thousand seven hundred and twenty-five $\frac{85}{100}$ dollars to the parties named in the schedule annexed to co-defendant's answer, marked "No. 3," to which reference is craved as part hereof, which indebtedness was secured by mortgages and privileges, and was still unpaid on the 15th Oct., 1867, when New Orleans and Carrollton Railroad Company acquired the property set forth in the act of that passed before S. Magner, notary; that said May became indebted to the United States and was so indebted on said 16th May, 1867, in the sum of one million and seventy-six thousand seven hundred and ninety-two $\frac{20}{100}$ dollars, all of which was then due and owing, and for the payment of which

229 said United States had a priority upon all his property; that owing to his said condition said May was unable to carry on said partnership; that on said date said May held a power of attorney from said Graham authorizing him, said May, among other things, "to sell

and buy real estate for such price and on such terms as in his discretion seemed fit, to dissolve any partnership in which said Graham was or might be a partner, to make any settlement, transaction, compromise, or otherwise of any concern or matter"; all of which more fully appears by reference to said power filed with this answer as Exhibit E, to which reference is craved.

This defendant further avers that on said 16th May, 1867, said railroad was incomplete; for its completion and to carry out the enterprise of said partnership a large outlay of money was requisite; all its capital furnished and all its earnings had been consumed in its business; that by the terms thereof said lease could not be transferred without the consent of this defendant and of said company.

230 Now this defendant admits and avers that under the state of facts relative to said partnership then existing said May, acting for himself and as the agent of said Graham, and as set forth in the act, did, on the 16th May, 1867, sell, assign, convey, and deliver to the United States the following property: "All and singular the right, title, interest, share, property, claim, and demand, of every nature and kind whatsoever, of them, the said Thomas P. May and Augustus Clason Graham, and of each of them, in and to the New Orleans and Carrollton Railroad, the lease and other franchises thereof, and the railroad-tracks, rolling-stock, engines, cars, live stock and other appurtenances thereunto belonging or in anywise appertaining, the same having been acquired by the said May and Graham by the provisions of certain articles of co-partnership entered into between them and Gustave Toutant Beauregard for the purpose of conducting the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand eight hundred and sixty-six," as is more fully set forth in the act filed with complainant's bill as Exhibits H & N, to which

231 reference is craved, for and in consideration of the price of (8480,-000.00) four hundred and eighty thousand dollars, which, as agreed upon by said United States and said May, was to be settled and liquidated by the granting of an acquittance and discharge by the United States to said T. P. May of so much of his said indebtedness to the United States and of said price as said United States might receive from the sale of said property conveyed; that said consideration was settled and discharged by the United States as stipulated in said act; that said United States did subsequently sell said property for two hundred and eighty thousand dollars, as is more fully set forth hereinafter, to which reference is craved, the said May declaring in said act of sale that though it would appear from the premises said Graham was a part owner of said property, yet in truth said May was the owner of the apparent interest of said Graham; all of which will more fully appear by said act of conveyance, sale, and transfer passed before A. Hero, notary, of said date, and the act of which it is confirmatory, passed before

232 same notary, of date the 14th May, 1867, filed as Exhibits H and N, to which reference is craved: that said United States was represented in said conveyance by said Knox, who was its duly authorised agent in the premises, with full power from said United States, through its proper official, to act in respect to and accept said conveyance for said United States.

This defendant avers that under the facts herein stated said May had authority from said Graham to make said conveyance, but whether it is deemed said May had or had not said authority from said Graham this defendant insists and maintains that under all the facts herein stated and the law arising thereon, said May had the right to make said con-

veyance; that the same is legal and valid in all respects, and vested in the United States a perfect title to said property conveyed, and this defendant denies that the same is fraudulent, null, and void, as alleged in complainant's bill.

This defendant avers and admits that the United States having acquired title to the property conveyed, as aforesaid, by said May
233 to said United States by two acts, one dated 21st August, 1867, and one dated 31st October, 1867, sold, assigned, conveyed, and delivered said property to said co-defendants, Joseph Hernandez, A. Bonneval, and G. Binder, for the price and sum of two hundred and eighty-eight thousand dollars, which by said purchasers was paid to said United States, as stipulated in said acts, which are filed with complainant's bill as Exhibits I & J and K, to which reference is craved; that through William Bell, who executed on behalf of said United States said conveyance of date the 21st August, 1867, was fully authorized for and on behalf of said United States to make said conveyance for said price, and to enter into all other stipulations in said act contained, except such of said stipulations as are omitted and differ from said two acts executed by the Solicitor of the Treasury of date the 31st October, 1867, filed with complainant's bill as Exhibits J & K. Yet some of the stipulations contained in said act executed by Bell did not meet the approval of said Solicitor, and therefor said Solicitor executed said act of sale and transfer of said property and the other act relative
234 thereto, both executed by said Solicitor, of date 31st October, 1867, filed as Exhibits I, J, & K with complainant's bill, to which reference is craved as part of this answer, under which said acts, and in accordance therewith, said co-defendants, J. Hernandez, A. Bonneval, and G. Binder, paid said price of two hundred and eighty-eight thousand dollars to said United States, acquired and received delivery of the aforesaid property to them conveyed; that said Solicitor of the Treasury had full power under the law to execute said acts.

This defendant further admits and avers that on the 15th October, 1867, by act passed before S. Magner, notary, between said Hernandez, Bonneval, & Binder, the New Orleans & Carrollton Railroad Company, and this defendant, the aforesaid lease was cancelled and annulled, and all the property acquired by said partnership was conveyed, delivered to, and acquired by the New Orleans & Carrollton Railroad Company, for and in consideration of four hundred thousand dollars of the capital stock of the said company, say, four thousand shares, which by said company were delivered to and received by this defendant and Her-
235 nandez, Bonneval, and Binder, under and in accordance with the terms of said act, by virtue whereof said company received possession and delivery, acquired, and is now vested with, the title to the following property conveyed by said act, as appears by said act filed with complainant's bill as Exhibit L, to which reference is craved as part of this co-defendant's answer, to wit:

"All the railroad improvements, the tracks, horses, mules, or whatever other live-stock, the cars, harnesses, rolling-stock, engines, and improvements acquired by, placed, and put upon said road by said partnership, and appurtenances thereof; that certain square of ground described as No. sixty-six in the city and parish of Jefferson, fully described in Exhibit D, filed with complainant's bill; that certain square of ground designated as No. sixty-five, in the city and parish of Jefferson, fully described in Exhibit C, filed with complainant's bill; that certain lot of ground in the town of Carrollton, parish of Jefferson, fully described in Exhibit E, filed with complainant's bill; several certain lots in the

236 first district of this city, in square bounded by S't Charles, Felicity, Apollo, & Polymnia streets, fully described in Exhibit F, filed with complainant's bill, and other property, as is more fully shown by reference to said act of date 15th October, 1867, embracing all property acquired by the United States and by said Hernandez, Binder, and Bonneval under the acts of sale, transfer, and assignments aforesaid."

This defendant denies that at or before the date of said conveyance from May to the United States he was possessed of no means; he avers, on the contrary, that at or before said date said May was possessed of large means and property: that said May has never applied for the benefit of the bankrupt law; this defendant admits that at and before said date said May was largely indebted; he believes that at the date referred to said May was, and since has been, insolvent; and this defendant believes that since said transfer by him said May has not been possessed of any means or property except such as is of inconsiderable value.

237 This defendant does not admit that said Graham was, at the time of said transfer of May, possessed of no means; he believes and avers that said Graham was then possessed of means and property; he admits that though possessed of said means and property said Graham was at and before said date largely indebted; he believes and avers that said Graham is now possessed of means and property; that he has never applied for the benefit of the bankrupt law, and save as aforesaid this defendant cannot state as to his belief or otherwise whether said Graham is or was insolvent.

This defendant admits that at the date of said acts of 14th May, 1867, 16th May, 1867, 21st August, 1867, 31st October, 1867, and 15th October, 1867, he knew that with the aforesaid knowledge on the part of said bank charged in this answer there had been obtained from said bank, for said partnership, upon the checks of this defendant as lessee, drawn by him in accordance with the aforesaid understanding between him and said May and Graham hereinbefore set forth and paid by said bank without any negotiation or intercourse between said bank and this defendant, the sum of $72,000.00, being the aforesaid balance, and

238 this defendant knew that no part of said balance obtained under said circumstances had been paid.

This defendant further admits and avers that at said dates last referred to he then knew that with the aforesaid knowledge on the part of said bank of the facts charged in this answer to have been in its knowledge there had been obtained from said bank, for said partnership, upon the checks of himself as lessee, drawn by him in accordance with the understanding between May, Graham, and himself, hereinbefore setforth, and paid by said bank without any negotiation or intercourse between said bank and himself save as aforesaid, the amount of the two credits aforesaid; and the defendant further admits he then knew the circumstances under which said credits were entered, as the same are set forth in this answer, and he admits he knew that said amounts obtained upon said checks had been used in the business of and for said partnership, and except as stated and explained herein this defendant denies that he had any knowledge touching the business or relations between said bank and said partnership.

239 This defendant further admits that at the date of said acts he believed the pecuniary condition of said May and Graham to be as he has set forth the condition of said May and Graham in this answer, and this defendant denies any other or further knowledge of their condition.

This defendant denies that the sales and transfers of date the 14th May, 1867, 16th May, 1867, 21st August, 1867, and 31st October, 1867, set forth in this answer were in fraud of the alleged rights of said bank, and he avers and maintains that said sales were legal and valid in all respects; and he denies that the property conveyed by said sales and transfers is liable in any manner whatever for the alleged debt claimed by complainant.

The defendant admits the execution of the writing purporting to be an assignment of the pretended rights of said Graham in and to the property of said partnership to the 4th National Bank; he believes that at the execution thereof said 4th National Bank had assumed liabilities for the 1st National Bank, but this defendant believes and avers that said liabilities have been satisfied by the moneys realized upon bills drawn by the 1st National Bank, other securities which were placed in the hands of said 4th National Bank by said Graham to indemnify
240 it against such liabilities; and this defendant believes that said writing was executed for the avowed purpose of securing said 4th National Bank against said liabilities, but this defendant denies that by reason thereof said 4th National Bank acquired any rights or claims whatever upon the property conveyed by said May to the United States, and that acquired by the New Orleans and Carrollton Railroad Company by said act of date the 15th October, 1867.

This defendant believes that William Bell, who was the agent of the United States and the Solicitor of the Treasury, knew on the 21st August, 1867, and 31st October, 1867, said account of this defendant as lessee with said bank of the aforesaid balance shown by it of said credit of $40,000^{00}$, entered by said bank in said account, of said note of $40,000^{00}$; that by said May it had been delivered to and was held by said bank; that said balance and said credit had been in the mode, under the circumstances, and in accordance with the understanding between said May, Graham, and this defendant, hereinbefore set forth, obtained from said bank for said partnership, and used in its
241 business, save as aforesaid. This defendant cannot set forth as to his belief or otherwise, whether said United States had any knowledge whatever touching the business or relations between said 1st National Bank and said partnership, or as to the results thereof.

This defendant denies that at and before said date of said conveyance to the United States he was possessed of no means; he believes and avers he was always possessed of some means; he submits, whether, under the facts herein stated, he ever was or is liable for the money obtained for said partnership from said bank under the circumstances herein stated, and if decreed not liable, he is and always has been solvent; he avers that he is now possessed of some means and property, but admits the same is inconsiderable in proportion to the amount claimed by complainant.

This defendant believes the condition of said May, as he has set it forth herein, was, on said 21st August, 1867, and 31st October, 1867, known to said solicitor, and to said Bell; save as aforesaid, this defendant cannot state as to his belief or otherwise whether said
242 United States had any knowledge whatever touching the pecuniary condition of said May, Graham, or this defendant.

And this defendant denies all other matter and thing in said bill charged material for him to make answer unto, and not herein sufficiently answered, avoided, or denied, is true to his knowledge or belief.

All of which this defendant is ready to aver and prove, and prays to

be hence dismissed with his costs in this behalf most wrongfully sustained.

(Signed) G. T. BEAUREGARD.
L. E. SIMONDS and
LEA, FINNEY and MILLER,
Solicitors.

G. T. Beauregard, being duly sworn, deposes and says that all the matters and things in the foregoing answer contained, which are stated upon the personal knowledge of this affiant, are true and correct, and those stated upon the information of others he believes to be true.

G. T. BEAUREGARD.

Sworn to and subscribed before me Octo. 19th, 1870.
(Signed) F. B. VINOT,
Dy Clerk.

243 *Answer, and schedules Nos.* 1, 2, *and* 3, *of the New Orleans and Carrollton Railroad Company and others.—Filed October* 19*th*, 1870.

United States circuit court.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans,
vs.
THE NEW ORLEANS AND CARROLLTON RAILroad Company et al. } No. 5931.

The answer of the New Orleans and Carrollton Railroad Company, and of Joseph Hernandez, Alexander Bonneval, and George Binder, defendants herein, to the original bill and amended bill of complaint of Charles Case, receiver of the First National Bank of New Orleans.

These defendants the New Orleans and Carrollton Railroad Company, a corporation duly established by law, domiciled in New Orleans, Joseph Hernandez, Alexander Bonneval, and George Binder, now, and at all times hereafter, reserving to themselves all manner of benefit and advantage to themselves of the many errors and insufficiencies in such bill contained, for answer thereunto or unto so much as these defend-
244 ants are advised is material for them to make answer unto, say:

They admit that said Case is receiver of said bank.

They admit that on the 12th day of April, 1866, G. T. Beauregard did lease from said company, one of these defendants, the railroad and other property appertaining thereto as the same more fully appears by reference to the act of lease filed by complainant as Exhibit A, to which reference is made as part hereof.

These defendants admit that said lease was made in the name of said Beauregard, for the benefit of the partnership hereinafter referred to; that on the 18th April, 1866, a contract was entered into by said T. P. May, Augustus C. Graham, and Gustave T. Beauregard, for the conducting of said railroad under said lease, by which said Beauregard was to manage said road at a salary of $5,000.00 per annum, to have as share of the profits made, or losses, or debts incurred in said enterprise, until the reimbursement to said May and Graham of the capital stipulated in said act to be furnished by them, with interest thereon, as
245 shown by said contract, copy whereof is filed by complainant as Exhibit B, to which reference is made as part hereof, and defend-

ants admit that as restricted , and subject to the terms and stipulations thereof, said contract was a partnership, and that under it the business thereof was conducted, the railroad remodelled, changed from horse to steam cars, and heavy outlays were incurred by said partnership.

These defendants admit the purchases set forth in complainant's bill, to wit, that from W. C. Raymond, of date 5th May, 1866, that from Samuel A. Cohn, that from the New Orleans and Carrollton Railroad Company, of date the 29th June, 1866, and that from said company of date the 15th January, 1867, as appear from the Exhibits C, D, E, F, filed with complainant's bill, referred to as part hereof; they admit that said purchases were made for such partnership and paid for with its funds; they further admit that by said lease said partnership was entitled to the use of a square of ground, corner of S't Charles street and Napoleon avenue, on which said partnership made valuable im-
246 provements, but they aver that by the terms of said lease said improvements were to revert to said company at the expiration of said lease, without costs to said lessors.

These defendants aver that said partnership kept but one bank-account, that kept with said bank; that there was expended by said partnership from and out of its own funds prior to Sept'r 6th, 1866, for the purchase of said lease, the improvement and alteration of said railroad, for the equipment and furnishing of stock and other necessary materials, for the purchase of the real property above described, and for improvements on it, and for other purposes connected with said partnership business, a large amount of money, no portion of which funds were derived from said bank, and the bulk of said proper funds were deposited with and held by said bank, and by it were disbursed by it to said partnership, from time to time as in the ordinary course of account between the bank and its customer, and a statement of the funds so expended and the objects of said expenditure is herewith filed as Schedule No. 1, to which reference is craved.

247 These defendants further aver that to facilitate said May and Graham in furnishing the money stipulated by said contract, and at their special instance and request, it was provided therein that said Beauregard, lessee, should deposit the funds and keep the account of said partnership in said bank, which was done by said lessee, and said Beauregard was given to understand by said May and Graham, and did understand, that he as lessee should check upon said bank for the wants of said partnership, and that proper business arrangements would be made by them, said May and Graham, to the end that the necessary funds should be provided by them, put to the credit of said lessee in said bank to meet the checks so drawn, and in this mode the stipulations in said contract relative to the furnishing of funds be fulfilled by said May and Graham, through and by said business arrangements to be by them effected without any personal liability or obligation of him, said Beauregard, for the money paid by said bank upon said checks.

Defendants further aver that during the existence of said part-
248 nership said Beauregard only, received his salary, and the partnership made no profits.

These defendants further aver that the stipulations in such act of partnership relative to the furnishing of said money requisite therefor, by said May & Graham to the management of said board by Beauregard as lessee for a fixed salary for his personal services, and in respect to the period when according to said contract his participation in the profits and liability for the debts of said partnership was to commence

and the actual pecuniary conditions of said partnership, was at all times well known to said bank, through some of its executive and administrative officers; that save and except the understanding aforesaid, and the bare presentation and payment of said checks at the counter of this bank, no intercourse or negotiation of any kind or nature relative to such checks or their payment or of or concerning the same, ever took place between said Beauregard and the officers of said bank, or any of them. These defendants admit and aver that in the absence of any such intercourse or negotiation between said Beauregard relative to said checks or their payment, save as aforesaid, and with such knowl-
249 edge of the aforesaid facts on the part of said bank, as is hereinbefore set forth and charged as in its knowledge, there was obtained from said bank at various times subsequent to 6th September, 1866, for said partnership upon the checks of said lessee, drawn by him in accordance with the aforesaid understanding between May, Graham and said Beauregard, hereinbefore set forth, the sum of seventy-two thousand and eight $\frac{89}{100}$ dollars, being the balance of account shown by Exhibit G, filed with complainant's bill, and defendants admit that no part of said balance has been paid. Defendants further admit that on the 14th September, 1866, said bank entered to the credit of said Beauregard, lessee, the sum of forty thousand dollars, and on the 19th March, 1867, said bank entered to the credit of said lessee the sum of one hundred and twenty-five thousand dollars, and defendants admit and aver that without any intercourse or negotiation between said bank and said Beauregard save as aforesaid, and with such knowledge of the facts aforesaid, hereinbefore set forth and charged to have been in the knowledge of said bank, there was obtained from said bank at various times subsequent to 6th September, 1866, for said partnership
250 upon the checks of said lessee by him drawn in accordance with the aforesaid understanding between May, Graham, and himself hereinbefore set forth, the amount of said two credits so entered by said bank to the credit of said lessee.

These defendants admit and aver that a part of the money expended by said partnership, that is, that part expended between the 6th September, 1866, and 11th May, 1867, consisted of the proper funds of said partnership, no portion of which was derived from said bank, and the aforesaid $72,008\frac{89}{100}$ and the amount of said two credits, and a schedule showing that part expended, the sources from whence derived and the items of said expenditures is herewith filed as No. 2, to which reference is craved as part hereof, and these defendants, except as stated and explained herein, deny that any portion of the money expended by said partnership was obtained from said bank, and they submit whether the facts stated warrant the conclusions of indebtedness set forth in complainant's bill.

These defendants admit and aver that said account, filed as Exhibit G, embracing as it does said two credits, entered by said bank,
251 and the checks drawn by said lessee in accordance with the understanding between May, Graham and Beauregard, hereinbefore set forth, and in the absence of any negotiation or intercourse between said bank and said Beauregard save as aforesaid, and with the knowledge on its part of the facts hereinbefore set forth and charged as in this knowledge, paid by said bank, is as stated and explained herein, the account opened with said bank by said lessee for said partnership.

The defendants admit that said bank was incorporated and organized about the 28th Nov'r, 1864, that May and Graham were amongst its active founders, that B. F. Flanders was elected its president, and A.

C. Graham its cashier, that said May was a prominent director, that said Graham was elected president thereof on the 12th July, 1864, continued so to act until 13th July, 1866, when he absented himself; that upon his leaving T. P. May was chosen its president; that Graham not returning, said May was elected its president on or about the 12th October, 1866; that he continued so to act until the 12th April, 1867, when D. B. Forbes, the former vice-president, was elected president
252 and continued so to act until the bank was closed by proceedings of the government under the national banking law; that at all times said May exercised an influence over the administration of said bank, which these defendants believe was leading in its nature.

Defendants admit and aver that while said May was acting as president aforesaid, saving to the checks drawn by said lessee in accordance with the understanding between May, Graham, and Beauregard hereinbefore set forth, and to the fact that without any negotiation or intercourse between said bank and said lessee, save as aforesaid, and with the knowledge of the fact hereinbefore set forth and charged as in its knowledge the bank paid said checks, the said account became and was overdrawn on the 15th September, 1866. Defendants admit that then said May did hold a power authorizing him to draw promissory notes for his principal's debts, and only for *for* the debts of his said principal; that holding said power said May on or about the 14th September, 1866, did draw a promissory note in the name of said Beauregard, lessee, payable to the 1st National Bank of New Orleans, on demand, for
253 forty thousand dollars. These defendants further admit and aver that on said 15th September, 1866, without any agency of said Beauregard to procure the entering of the credit of $40,000 hereinafter spoken of or in respect thereto, said bank did enter to the credit of said Beauregard, lessee, the aforesaid credit of $40,000.00, and defendants believe and admit it was by and through the action of said May in that behalf that said bank entered such credit; save as aforesaid, defendants cannot set forth as to their belief or otherwise whether said May caused said note to be credited to said account, or whether said note was drawn to settle said account nominally; and defendants submit to the court whether, under the facts stated, said power authorized said May to draw said note.

These defendants believe it to be true that no attempts to collect said note were made; that it remained in the bank's possession until the closing up thereof, is now in complainant's possession, and is annexed to his bill.

These defendants further admit and aver that owing to the checks drawn by said Beauregard, lessee, under his aforesaid under-
254 standing with said May and Graham hereinbefore set forth, and that with the knowledge aforesaid on the part of said bank of the aforesaid facts charged in this answer to have been in its knowledge, and without any intercourse or negotiation between said bank and said Beauregard, save as aforesaid, the bank paid such checks; that said account of said lessee became and was overdrawn on said 19th March, 1867, and defendants admit and aver that on said date said May did hold a power of attorney from said Graham which fully authorized said May to draw the bill hereinafter spoken of, as appears by said power filed with this answer as Exhibit "E," and that holding such power said May did on or about said date draw a bill of exchange upon A. C. Graham for $125,000.00, payable 45 days after sight, in favor of said bank, and these defendants admit and aver that on said date said bank did enter to the credit of said Beauregard, lessee, $125,000.00. Defendants

believe it to be true that it was by and through said May's action in that behalf that said bank entered said credit. Defendants be-
255 lieve it to be true that said bill, though delivered to said bank, was never stamped or forwarded for presentation or acceptance by said bank, but remained in its possession until it came into complainant's control, and is annexed to his bill.

These defendants submit whether, under the facts stated, said sums of $40,000 and $125,000 were taken from said bank by said May in violation of his duty and in fraud as in said bill alleged.

These defendants aver and maintain that by the acts of sale, transfer, and conveyance by Thomas P. May to the United States, of date the 14th May, 1867, passed before A. Hero, notary, filed with complainant's bill as Exhibits N and H, and as is more fully explained hereinafter, said United States acquired a perfect, legal, and valid title to the property the subject of and conveyed by said acts; that to said property Joseph Hernandez, Alexander Bonneval, and George Binder acquired a perfect, legal, and valid title by the acts of sale, assignment, and conveyance from said United States, of date the 31st August, 1867, and 31st October, 1867, filed with complainant's bill as Exhibits I, J, and K, and as is more fully explained hereinafter. And this defendant,
256 the New Orleans and Carrollton Railroad Company, by the act of date the 15th October, 1867, filed with complainant's bill as Exhibit L, and as is more fully explained hereinafter, acquired a perfect, legal, and valid title to all the property acquired by said partnership, embracing all the property acquired by the United States and by said Hernandez, Binder, and Bonneval under the various acts aforesaid, and these defendants deny that the complainant, or the bank he represents, has any right, claim, or demand of any nature whatsoever upon said property.

The defendants admit that John Jay Knox, as agent of the Treasury Department, took possession of said bank, its assetts, closed the same as an acting bank about the 13th May, 1867. Defendants believe and admit that said Knox became aware of said account of Beauregard, lessee; of said balance, that said bank with the knowledge aforesaid of the facts charged herein to have been in its knowledge, and without any intercourse between said bank and said Beauregard, and save as aforesaid, had paid upon his checks as lessee aforesaid the amount of said balance and of said credits; and said Knox also became aware
257 that such amounts had been used in the business of said partnership; save as aforesaid and as hereinafter set forth, these defendants cannot set forth as to their belief otherwise whether said Knox or the United States had any knowledge of the dealings between said bank and said partnership.

These defendants aver that besides said money obtained from said bank a part of the capital of said partnership was furnished. They believe and aver that all of said capital furnished was the means of said May; that on said 16th May, 1867, said Graham was indebted to said May in settlement of said partnership and of its accounts; that on said date said partnership was indebted in the sum of one hundred and seventeen thousand seven hundred and twenty-five $\frac{85}{100}$ dollars to the parties named in the annexed schedule, marked "No. 3," to which reference is craved as part hereof, which indebtedness was secured by mortgages and privileges, and was still unpaid on the 15th October, 1867, when this defendant, said company, acquired the property set forth in the act of that date passed before S. Magner, notary; that said May became indebted to said United States, and was so indebted on said 16th May, 1867, in

258 the sum of one million and seventy-six thousand seven hundred and ninety-two $\frac{29}{100}$ dollars, all of which was then due and owing, and for the payment of which said United States had a right of priority upon all his property; that owing to her said condition said May was unable to carry on such partnership; that on said date said May held a power from said Graham authorizing said May, among other things, to sell and buy real estate for such price and in such terms as in his discretion seemed fit, to dissolve any partnership in which said Graham was or might be a partner, to make any settlement, transactions, compromise, or otherwise of any concern or matter, all of which more fully appears by reference to said power filed with this answer as Exhibit E, to which reference is craved. These defendants further aver that on said 16th May, 1867, said railroad was incomplete; for its completion and to carry out the enterprise of such partnership a large outlay of money was requisite, all its capital furnished and all its earnings had been consumed in its business; that by the terms thereof said lease could not be transferred without the consent of this defendant, said company.

259 Now these defendants admit and aver that under the state of facts relative to said partnership then existing said May, acting for himself and as agent of said Graham, and as set forth in this act, did on the 16th May, 1867, sell, assign, convey, and deliver to the United States the following property: "All and singular the right, title, interest, share, property, claim, and demand of every nature and kind whatsoever of them, the said Thomas P. May and Augustus Clason Graham, and of each of them, in and to the New Orleans and Carrollton Railroad, the lease and other franchises thereof, and the railroad tracks, rolling stock, engines, cars, live stock, and other appurtenances thereunto belonging or in anywise appertaining, the same having been acquired by the said May and Graham by the provisions of certain articles of copartnership entered into between them and Gustave Toutant Beauregard for the purpose of conducting the business of the said railroad, by an act passed before A. Ducatel, a notary in this city, on the eighteenth day of April, one thousand eight hundred and sixty-six," as is more fully set forth in the acts filed with complainant's bill as Exhibits H & N, to which ref-

260 erence is craved, for and in consideration of the price of $480,000.00 (four hundred and eighty thousand dollars), which, as agreed upon by said United States and said May, was to be settled and liquidated by the granting of an acquittance and discharge by the United States to said T. P. May of so much of his said indebtedness to the United States and of said price as said United States might receive from the sale of the property conveyed; that said consideration was settled and discharged by the United States as stipulated in said act; that said United States did subsequently sell said property for two hundred and eighty thousand dollars, as is more fully hereinafter set forth, the said May declaring in said act of sale that though it would appear from the premises said Graham was a part owner of said property, yet in truth said May was the owner of the apparent interest of said Graham, all of which more fully appears by said act of conveyance, sale, and transfer passed before A. Hero, notary, of said date, and the act of which it is confirmatory, passed before same notary of date the 14th May, 1867, filed as Exhibits H & N with complainant's bill, to which reference is craved; that said United States

261 was represented in said conveyance by said Knox, who was its duly authorized agent in the premises, with full power from said United States through its proper official to act in respect to and accept said conveyance for said United States.

These defendants aver that under the facts herein stated said May

had authority from said Graham to make said conveyance, but whether it is deemed said May had or had not said authority from said Graham, defendants insist and maintain that under all the facts herein stated, and the law arising thereon, said May had the right to make said conveyance; that the same is legal and valid in all respects, and vested in the United States a perfect title to said property conveyed, and defendants deny that the same is fraudulent, null, and void, as alleged in complainant's bill.

These defendants aver and admit that the United States having acquired title to the property conveyed as aforesaid by said May to said United States by two acts, one dated 21st August, 1867, and one dated 31st October, 1867, sold, assigned, conveyed, and delivered said property to these defendants, Joseph Hernandez, A. Bonneval, and G. Binder, for the price and sum of two hundred and eighty-eight
262 thousand dollars, which by said purchasers was paid to said United States as stipulated in said acts, which are filed with complainant's bill as Exhibits I, J, and K, to which reference is craved as part hereof; that although William Bell, who executed on behalf of said United States said conveyance of date the 21st August, 1867, was fully authorized for and on behalf of said United States to make said conveyance for said price, and to enter into all the other stipulations in said act contained, except such of said stipulations as are omitted and differ from the two acts executed by the Solicitor of the Treasury of date the 31st of October, 1867, filed with complainant's bill as Exhibits J & K, yet some of the stipulations contained in said act executed by Bell did not meet the approval of said Solicitor, and, therefore, said Solicitor executed said act of sale and transfer of said property, and the other act relative thereto, both executed by said Solicitor of date 31st October, 1867, filed as Exhibits I, J, and K with complainant's bill, to which reference is craved as part hereof, under which said acts and in accordance therewith these defendants, J. Hernandez, A. Bonne-
263 val, and G. Binder paid said price of two hundred and eighty-eight thousand dollars to said United States, acquired and received delivery of the aforesaid property to them conveyed; that said Solicitor of the Treasurer had full power under the law to execute said acts.

These defendants further admit and aver that on the 15th October, 1867, by act passed before S. Magner, notary, between said Hernandez, Bonneval, Binder, this defendant, the New Orleans & Carrollton Railroad Company, and said Beauregard, the aforesaid lease was cancelled and annulled, and all the property acquired by said partnership was conveyed, delivered to, and acquired by this defendant, the New Orleans and Carrollton Railroad Company for and in consideration of four hundred thousand dollars of the capital stock of this said company, say four thousand shares, which by this defendant, said company, were delivered to and received by said Beauregard, Hernandez, Binder, and Bonneval, under and in accordance with the terms and conditions of said act, by virtue whereof this defendant, said company, received possession and delivery, acquired and is now vested with the title to the following
264 property conveyed by said act, as appears by said act filed with complainant's bill as Exhibit L, to which reference is craved as part hereof, to wit:

"All the railroad improvements, the tracks, horses, mules or whatever other live stock, the cars, harnesses, rolling-stock, engines, and improvements acquired by, placed and put upon said road by said partnership, and appurtenances thereof.

"That certain square of ground described as No. sixty-six, in the city and parish of Jefferson, fully described in Exhibit D, filed with complainant's bill.

"That certain square of ground designated as No. sixty-five, in the city and parish of Jefferson, fully described in Exhibit C, filed with complainant's bill.

"That certain lot of ground in the town of Carro'lton, parish of Jefferson, fully described in Exhibit E, filed with complainant's bill"; several certain lots in the first district of this city, in square bounded by S't Charles, Felicity, Apollo and Polymnia streets, fully described in Exhibit F, filed with complainant's bill, and other property, as is more fully shown by reference to said act of 15th October, 1867, embracing all property acquired by the United States and by said Hernandez, Binder and Bonneval, under the acts of sale, transfer, and assignment aforesaid."

265 These defendants deny that, at or before the date of said conveyance from May to the United States, he was possessed of no means; they aver, on the contrary, that at and before said date said May was possessed of large means and property; that said May has never applied for the benefit of the bankrupt act; defendants admit that at and before said date said May was largely indebted; they believe that said May was at the date referred to and since has been insolvent, and defendants believe that since said transfer by him said May has not been possessed of any means or property except such as is of inconsiderable value.

These defendants do not admit that said Graham was at the time of said transfer of May possessed of no means; they believe and aver that said Graham was then possessed of means and property; they admit that though possessed of said means and property said Graham was, at and before said date, largely indebted; they believe and aver that said Graham was possessed of means and property; that he has never applied for the benefit of the bankrupt law; and save as aforesaid defendant cannot state as to their belief or otherwise whether said

266 Graham is or was insolvent.

These defendants deny that said Beauregard at and before said date of said conveyance to the United States was possessed of no means; they believe and aver that he was always possessed of some means; they submit whether under the facts herein stated he ever was or is liable for the money obtained from said partnership from said bank under the circumstances herein stated, and if decreed not liable, he is and always has been solvent. They aver that said Beauregard is now possessed of some means and property, but admit the same is inconsiderable in proportion to the amount claimed by complainant.

These defendants admit that at the date of said acts of 21st August, 1867, 31st October, 1867, 15th October, 1867, they knew that with the aforesaid knowledge on the part of said bank charged in the answer, there had been obtained from said bank for said partnership, upon the checks of said Beauregard, lessee, drawn by him in accordance

267 with the aforesaid understanding between him and said May and Graham, hereinbefore set forth, and paid by said bank, without any negotiation or intercourse between said bank and said Beauregard, save as aforesaid, the sum of $72,008.89, being the aforesaid balance, and these defendants knew that no part of said balance obtained under the said circumstances had been paid.

These defendants further admit and aver that at such dates last referred to they knew that, with the aforesaid knowledge on the part of

said bank of the facts charged in this answer to have been in its knowledge, there had been obtained from said bank for said partnership, upon the check of said lessee, drawn by him in accordance with the understanding between May, Graham, and himself, hereinbefore set forth, and paid by said bank without any intercourse or negotiation between said bank and said Beauregard, save as aforesaid, the amount of the two aforesaid credits, and these defendants further admit they then knew the circumstances under which said credits were entered, as the same are set forth in this answer. And they admit they knew
268 that said amounts obtained upon said checks had been used in the business of and for said partnership, and except as stated and explained herein, defendants deny they had any knowledge touching the business or relations between said bank and said partnership.

These defendants further admit that at the date of such acts they believed the pecuniary condition of said May, Graham, and Beauregard to be as they have set forth the conditions of said May, Graham, and Beauregard in this answer, and defendants deny any other or further knowledge of said condition. These defendants deny that the sales and transfers of date the 14th May, 1867, 16th May, 1867, 31 August, 1867, and 31st October, 1867, set forth in this answer, were in fraud of the alleged rights of said bank, and they aver and maintain that said sales were legal and valid in all respects, and they deny that the property conveyed by said sales and transfers is liable in any manner whatever for the alleged debt claimed by complainant.

These defendants submit to the judgment of the court whether
269 said Beauregard is or ever was liable for the aforesaid money obtained from said bank under the facts stated herein, but even if it be decreed he was liable, which they deny, these defendants aver and maintain that the stipulations in said act of date the 15th October, 1867, relative to the debts of said railroad company, and to the liability therefor referred to in complainant's bill, neither imposes or recognizes any obligations whatever on the part of this defendant, the New Orleans and Carrollton Railroad Company, to the complainant or the bank he represents; that no benefit or advantage whatever to said bank was contemplated or stipulated by said act, and defendants deny that said company by such stipulation recognized in any manner whatever or agreed to pay the alleged and pretended debt claimed by complainant.

These defendants admit the execution of the writing purporting to be an assignment of the pretended rights of said Graham in and to the property of said partnership to the 4th National Bank; they believe that at the execution thereof said 4th National Bank had assumed liabilities for the 1st National Bank, but these defendants believe
270 and aver that *that* said liabilities have been satisfied by the moneys realized upon bills drawn by the 1st National Bank and other securities which were placed in the hands of said 4th National Bank by said Graham to indemnify it against such liabilities, and these defendants believe that said writing was executed for the avowed purpose of securing said 4th National Bank against said liabilities, but these defendants deny that by reason thereof said 4th National Bank acquired any rights or claims whatever upon the property conveyed by said May to the United States, and that acquired by this defendant, the New Orleans and Carrollton Railroad Company, by said act of date the 15th October, 1867.

These defendants, Hernandez, Bonneval, and Binder, aver that prior to the instituting of this suit they had sold and parted with all the stock acquired by them under the terms of said act of 15th October,

1867, for a valuable consideration to them paid therefor by the purchasers thereof.

These defendants aver that between the date of said transfer
271 by said May to said United States and the 15th October, 1867, said road was managed and directed by said Beauregard; that during said period the United States expended six thousand dollars for the expenses of said road.

These defendants further show to the court that by the article 1982 of the Civil Code, it is declared that "No contract made between the debtor and one of his creditors for the purpose of securing a just debt shall be set aside under this section, although the debtor were insolvent to the knowledge of the creditor with whom he contracted, and although the other creditors are injured thereby if such contracts were made more than one year before bringing the suit to avoid it, and if it contain no other cause of nullity than the preference given to one creditor over another."

And these defendants further show that if the complainant or the bank he represents ever had any cause of action or suit against these defendants or either of them for or concerning any of the matters in his said bill contained or concerning the property aforesaid acquired by one of these defendants, the New Orleans and Carrollton
272 Railroad Company, by said act of date the 15th October, 1867, passed before S. Magner, notary, or concerning the aforesaid property sold by said May to said United States, by said acts of date the 14th and 16 May, 1867, passed before A. Hero, notary, which these defendants do in no sort admit but deny such cause of action or suit, did accrue to said 1st National Bank, or to those representing it under the law, at the date of said acts, when the property, the subject of them, was transferred, conveyed and delivered for the consideration stated in said acts then paid, given and passed between the parties to said acts, and as stated in them, and subsisted for one year thereafter and no longer, and no such suit or action was brought by said bank, or by any one representing it under the law, or by complainant within said one year, or within one year from the date of complainant's appointment as receiver aforesaid, and the date when he took charge of said bank, and began to act as receiver, which was not later than 1st August, 1867, and by reason whereof complainant cannot maintain this suit, and these defendants insist upon said article of the civil code, as matter of defence to this suit, and claim the benefit
273 and advantage of the prescription and limitation established by said article.

These defendants believe that William Bell, who was the agent of the United States, and the solicitor of the treasury, knew, on the 21st August, 1867, and 31st October, 1867, of said account of Beauregard, lessee, with said bank, of the aforesaid balance shown by it, of such credit of $40,000.00 entered by said bank in said account, of said note of $40,000.00 by said May, it had been delivered to, and was held by said bank, that said balance and said credit had been in the mode under the circumstances and in accordance with the understanding between said May, Graham and Beauregard hereinbefore set forth, obtained from said bank for said partnership, and used in its business, save, as aforesaid, these defendants cannot set forth as to their belief or otherwise, whether said United States had any knowledge whatever touching the business or relations between said 1st National Bank and said partnership, or as to the results thereof.

274 These defendants believe that the condition of said May, as

they have set it forth herein, was, on said 21st August, 1867, and 31 October, 1867, known to said solicitor and to said Bill, save, as aforesaid, these defendants cannot state as to their belief or otherwise, whether said United States had any knowledge whatever touching the pecuniary condition of said May, Graham and Beauregard.

And these defendants deny all other matter and thing in said bill charged material for them to make answer unto, and not herein sufficiently answered, avoided or denied, is true to their knowledge or belief; all of which these defendants are ready to aver, and prove, and pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.
(Signed) J. HERNANDEZ.
(Signed) G. W. BINDER.

L. E. SIMONDS and
LEA, FINNEY & MILLER,
Solicitors.

275 G. T. Beauregard, president of the New Orleans and Carrollton Railroad Company, A. Bonneval, G. Binder, and Joseph Hernandez, being duly sworn, depose and say that all the matters and things in the foregoing answer contained which are stated upon the personal knowledge of these affiants are true and correct, and those stated upon the information of others they believe to be true.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.
(") J. HERNANDEZ.
(") G. W. BINDER.

Sworn to and subscribed before me Octo. 19th, 1870.

F. B. VINOT,
D'y Clerk.

U. S. circuit court.

C. CASE, RECEIVER 1ST NAT'L BANK OF NEW ORLEANS,
vs.
THE NEW ORLEANS & CARROLLTON R. R. COMPANY et a!s. } No. 5931.

It is agreed that the answers in this case shall be filed without the usual affidavit and signatures of defendants, provided the answers are sworn to as soon as defendants arrive (say by the 15th November, 1870)

276 Sept. 22d, 1870.
(Signed) ELMORE & KING,
Solicitors for Compl't.

And that the time for filing the answers shall be extended to the 20th Octo., 1870.

J. D. ROUSE, *Sol'r.*

DOCUMENT E.—*Filed with answers of d'f'ts Octo. 19th*, 1870.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NATIONAL BANK OF New Orleans,
vs.
G. T. BEAUREGARD AND OTHERS. } No. 5931.

Power of attorney by Aug. C. Graham to Tho's P. May.

Know all men by these presents that I, Augustus C. Graham, of the city of , State of , do hereby nominate, constitute, and appoint Thomas P. May, of the city of New Orleans, State of Louisiana, to be my true and lawful attorney for me, and in my name and behalf, and in my place and stead, to transact all business and concerns
277 of whatever kind, nature or description, soever the same may be, in which I now have, or may hereafter have, any interest, whether it be with individuals, partnerships, or with corporate bodies. And for me, and in my name and behalf, and in my place and stead, to do and perform all the acts and things which may become requisite and necessary, or be convenient and useful for and in the transaction of any such business or concern as fully as I myself could do if I were present, and to that end I now specially authorize and empower him, the said Thomas P. May, to pledge, sell, and transfer any stock standing, or which may hereafter stand, in my name on the books of any corporate body; to receive and receipt for any dividends that may be declared on the same; to deposit money in banks and draw checks in my name; to draw, endorse, and accept bills of exchange, and draw and endorse promissory notes; to endorse in my name, and lodge promissory notes and bills of exchange for collection, and to withdraw the same at discretion;
278 to borrow money and contract obligations with banks or other corporate bodies, partnerships, or individuals, whether on promissory notes or obligations drawn in my or his own favor, or drawn in the favor of any other person or persons, partnerships or corporate bodies, without limits as to amount, and from time to time to sign for the renewal of any part reloaned; to receive and acknowledge notices of protest of all or any bills of exchange, drafts or promissory notes, to sell and buy real estate for me and in my name for such prices and on such terms and conditions as my said attorney may in his discretion think fit; to dissolve any partnership in which I am or may hereafter be a partner; to make any settlement by transaction, compromise, or otherwise of any business concern or matter in which I am now or may hereafter have an interest, and to do and perform all acts, and to sign and execute all instruments in writing which may be requisite and necessary to carry into effect the said powers. And I hereby promise and bind myself to ratify and confirm all the acts done and performed by the said Thomas P. May for me and in my name, under and in
279 virtue of the said powers herein conferred and given, and to hold the same to be as binding and valid as though the same had been done, performed, and executed by myself in my own proper person.

In witness whereof I have hereunto set my hand and seal in the city of New York on this the twenty-ninth day of September, 1866.

(Signed) A. C. GRAHAM. [SEAL.]

In presence of—

(Signed) GEORGE CHALMERS.

CITY & COUNTY OF NEW YORK, *ss:*

On this twenty-ninth day of September, A. D. 1866, before me personally appeared Augustus C. Graham, to me known to be the individual described in, and who executed, the foregoing instrument, and who acknowledged to me that he executed the same.

I certify the foregoing to be a true and correct copy of the original power of attorney annexed for reference to an act of agreement between Augustus C. Graham and Charles Hodges, passed before me, notary, on the twenty-third day of October, eighteen hundred & sixty-six.

New Orleans, January 9th, 1869.

[SEAL.] T. O. STARK,
No. Pub.

280 *Schedule No. 1.—Filed with answer Octo. 19th, 1870.*

Receipts and expenditures from date of partnership between Beauregard, May, and Graham, to September 6th, 1866.

CAPITAL FURNISHED.

1866.	
April 16th	$20,000
May 4 "	20,000
June 9 "	20,000
" 16 "	8,000
July 10 "	20,000
	$88,000

RECEIPTS.

From capital invested and contributed to partnership	$88,000 00	
From earnings of road	65,263 95	
Total receipts		$153,263 95

EXPENDITURES.

Current working expenses	$53,478 79	
Monthly payments on lease 4¼ months @ $1,666 66/100 per month	7,499 97	
Painting steam-cars	2,975 00	
Purchase of buggy	184 35	
Purchase of horses	7,097 90	
Reconstructing railroad track, viz't:		
Cross-ties, & hauling & freight on same	2,768 89	
Brick-bats & sand for filling	381 20	
Lumber, including hauling & freight	13,932 11	
Iron, curve-castings & turn-tables	9,956 91	
Nails and spikes	1,234 59	
Labor	6,861 95	
	35,135 65	
Construction of stable-buildings and car-sheds, also boarding-house for employees, &c., as follows:		
231 Bricks and hauling	3,547 75	
Lime and sand	1,026 50	
Lumber and hauling	3,753 27	
Shingles and weather-boarding	1,269 29	
Labor	2,586 44	
	$12,183 25	

Cash payment on property corner of Napoleon & S't Charles avenues, purchased from wido. S. J. Peters, April 28th, 1866, (being part of purchase price property)	6,000 00
" " on property purchased from S. A. Kohn, April 30th, 1866, in square bounded by S't Charles, Apollo, Berlin, & Milan str'ts (being part of purchase price as per act filed as exhibit)	2,666 65
" " on property purchased from W. C. Raymond, May 5th, 1866, in square bounded by S't Charles & Nap'n avenues, Apollo & Berlin str'ts (being part of price as per act filed as ex.)	4,166 65
" " on Carrollton Hotel, bought June 29th, '66, from N. O. & C. R. R. Co	8,666 66
" " on lease of hotel purchased from P. Williams, June 16th, 1866	8,000 00
" paid for purpose of stocking hotel	1,000 00
Repairs to real estate, brokarage, &c	2,109 84
Total expenditures	$151,164 71
Cash balance, September 6th, 1866	$2,099 24

Of the expenses on the reverse (above) the following were for purchases of real estate by the partnership:

Cash payment on property cor'r Napoleon and S't Charles streets purchased from widow S. J. Peters on 28th April, 1866	$6,000 00
282 Cash payment on square bounded by S't Charles, Apollo, Berlin, & Milan streets, as per act of purchase thereof from S. A. Kohn, filed with bill as Exhibit D; date of pay't is April 30, '66	2,666 65
Cash payment on property purchased from W. C. Raymond, in square bounded by S't Charles, Apollo, Berlin, and Napoleon str'ts, as per act of purchase thereof filed with complainant's bill as Exhibit C; date of payment is May 5th, 1866	4,166 65
Cash payment on property purchased from the New Orleans & Carrollton Railroad Co., in town of Carrollton, as per act of purchase thereof filed with complainant's bill as Exhibit E; date of payment is 29th of June, 1866	8,666 66

Schedule No. 2.—Filed with answer October 19th, 1870.

United States circuit court.

CHA'S CASE, REC'R 1ST NATIONAL BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

Statement of receipts and expenditures of partnership between Beauregard, May, and Graham, from Sept. 6th, 1866, to May 11th, 1867.

283 Cash balance of Sept. 6th, 1866 ..... $2,099 24

CAPITAL FURNISHED.

1866, Aug. 11	3,474 90
" Octo. 23	40,000 00
	$43,474 90

RECEIPTS.

From capital invested and contributed	$43,474 90	
Obtained upon checks of Beauregard, lessee, as stated in the answer, thro' an't of two credits and bal. of $72,008 89/100	237,008 89	
Cash earnings of road	108,931 15	
From sales of old rolling-stock and old iron	8,590 88	
" rent, &c., of Carrollton Hotel	1,064	
" sale of hotel buggy	68 40	
" sale of horses	3,627 25	
" cash payment on sale of property cor. Napoleon & S't Cha's avenues to Mrs. Seelye, on Febr'y 19th, 1867 (being the same property purchased from S. J. Peters, April 28th, 1866)	5,000 00	
		$407,765 47
Total receipts, all sources		$409,864 71

EXPENDITURES.

Current working expenses		101,691 39	
Lease rent from Sept. 1st, 1866, to April 30th, 1867, paid monthly, viz't 7¾ months, @ 1,666 66/100 per month, $12,499.95; one half of month of April @ 1,708 33/100, 854.16		13,354 11	
Purchase of office safe		625	
Donation to Southern Hospital Association		200	
Purchase of horses & mules		19,891	
Purchase of cars & harness		78,002 27	
Premium on drafts for cars & iron		235 07	
Reconstructing railroad track as follows:			
284 Paid for lumber & cross-ties	23,154 99		
" " railroad-iron curve.			
Rails, turn-tables, frogs, & switches	24,081 70		
Paid for nails, spikes, & bolts	4,248 40		
" " gravels, shells, sand, breeze, & paving-stones	6,943 88		
" " Nicolson paving on Baronne & Jackson st's	1,835		
" " labor, &c	37,594 80		
		97,858 77	
Construction of stable-buildings, employees' boarding-house, and car-sheds, viz:			
Paid for lumber, weather-boarding, shingles, fence-pickets, sashes, & painting materials	24,376 92		
" bricks, granite blocks, sand, cement, lime	5,119 64		
" gravel-roofing of car-sheds, &c	2,212 70		
" plumber work & materials	1,436 34		
" nails, iron, hardware, well-pump, horse-power, & straw-cutter	3,960 73		
" labor	29,180 21		
		66,286 54	
Cash furnished hotel to carry on business; also, amounts expended liquidating hotel debts		6,086 78	
Paid balance due on purchase of hotel lease		4,000 00	
Paid auctioneer charges (offering hotel for sale)		188 50	
Paid brokerage on sale of property to M'r's Seelye		240 00	
Cash payment on horse-station property purchased from N. O. & C. R. R. Co., Dec'r 17th, 1866		8,666 66	
Paid May 3d, 1867, the one-year note on property purchased from S. A. Kohn		2,666 66⅔	
Paid May 8th, 1867, the one-year note on property purchased from W. C. Raymond		4,166 66⅔	
Paid interest on foregoing notes		546 66⅔	
Paid taxes and repairs on real estate; also notarial fees		725 31	
Total cash expended			$405,431 40
Cash balance on hand May 11th, 1867			4,433 31

235 **Of the expenses on other side the following are for real estate purchased for partnership.**

Cash payment on property purchased from N. O. and Carrollton Railroad Company, square bounded by S't Charels, Apollo, Felicity, and Polymnia s'ts, as per Exhibit F, filed with complainant's bill; date of payment is December 17, 1866, 8,666.66.

2d payment on property purchased from S. A. Kohn, paid May 3d, 1867, as per Exhibit D, filed with bill, 2,666.66.

2d payment on property purchased from W. C. Raymond, paid May 8th, 1867, as per Exhibit C, filed with bill, 4,166.66.

Schedule No. 3—Filed with answers Octo. 19th, 1870.

United States circuit court, district of Louisiana. In chancery.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

Statement of debts of partnership at date of T. P. May's conveyance to the United States, and unpaid at date of act of fusion.

4 notes for $4,333.$\frac{33}{100}$ each, given for property purchased from N. O. & C. R. R. Co., per act filed as Exhibit "F," and payable 20th December, 1867, and 20th Dec., 1868, with 8% interest, all secured by vendor's lien and mortgage upon said property		$19,413 33½
1 note for $4,166.$\frac{66}{100}$, given for square corner of Napoleon and S't Charles avenue, purchased from W. C. Raymond per act filed with bill as Exhibit "C," payable May 8th, 1868, with 8% interest, secured by vendor's lien and mortgage upon said property		4,833 ½
1 note given to D'r Elliot for mules, payable October 1st, 1867, secured by vendor's lien and privilege	$3,100 30	
1 note given to D'r Elliot for mules, payable Octo. 27th, 1867, secured by vendor's lien & privilege	4,680 00	
1 note given to D'r Elliot for mules, payable Dec'r 31st, 1867, secured by vendor's lien & privilege	3,145 45	
1 note given to D'r Elliot for mules, payable January 27th, 1868, secured by vendor's lien & privilege	4,770 00	
1 note given to D'r Elliot for mules, payable July 26th, 1867, secured by vendor's lien & privilege	4,632 30	
Due for 30 mules purchased from D'r Elliot, May 21st, 1867	6,750 00	
		27,078 05
2 notes for 8,666.66 each, given for hotel at Carrollton, purchased from New Orleans and Carrollton Railroad Company per act filed with bill as Exhibit E, payable June 2d, 1867, & June 2d, 1868, with interest, secured by vendor's lien and mortgage upon said property		$19,153 33
1 note given for square of ground near Napoleon, purchased from S. A. Kohn, per act filed with bill as Exhibit D, payable May 2d, 1868, with interest, secured by mortgage and vendor's lien upon said property		3,093 33½
Pay rolls for month of August		9,987 35
P. Makinney	40 00	
Geddes & Shakespeare	34 87	
Kearney, Blois & Co	8 50	
		83 37
McDuff & Co	5,556 74	
A. Perry	2 00	
Stevens and Seymour	41 30	
		5,600 04

F. Mauch	10 00	
Hill & Veazie	6 00	
Wheelock & Ball	7 65	
G. N. Morrison	5 31	
		28 96
A. K. Aken, 9.60; Wheelock & Co., 167.52	177 12	
Norton, Peterson & Fenner	11 40	
		188 52
Office rent for August, 125.00; U. S. tax on August receipts, 449.20		574 20
Jno. Armstrong, 48.75; Slocomb & Co., 58.99; Jackson R. R. Co., 288.75		396 49
W. Smith, 16.00; Taylor & Co., 1,599.55; Kaufman & Co., 8.96		1,624 51
Railroad rent for the last half of the month August		854 17
N. O. & C. R. R. Co., $414.85; Page & Co., $362.37		777 22
Bridge & Son, $45.00; J. B. Slawson, 1,400.00; J. C. Davey, 1,199.40		2,644 40
Picayune Saw-Mill, $50.03; John Rooney, 1,000.00		1,050 03
N. O. & C. R. R. Co. for amount of old rolling-stock sold		20,345 24
		$117,725 80

288 *Interpleader of the United States and consent to file.—Filed Octo. 26th, 1870.*

United States circuit court. In equity.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

To the honorable the judges of the circuit court of the United States for the fifth judicial circuit and district of Louisiana:

The attorney of the United States, Alanson B. Long, makes known to the court that the United States have to a certain extent warranted titles to certain property described in the bill to defendants Bonneval, Hernandez, & Binder, and would join in the defence of the same:

Wherefore the said U. S. att'y, acting under direction of the Solicitor of the Treasury, of date the 18th of May, 1870, asks of this court to be allowed to appear for the United States and take part with the counsel for the said defendants in defending them against the suit of the complainant, and to that end to examine witnesses, take orders, and do any and all such other measures as to such defence may be just
289 and proper, adopting all relevant portions of the answer herein filed by said Bonneval, Hernandez, & Binder on the 19th day of October, 1870.

(Signed) ALANSON B. LONG,
U. S. Att'y.

We consent that this interpleader be filed and order issue upon the sitting of court.

(Signed) J. D. ROUSE,
Sol'r for Compl't.

(") LEA, FINNEY & MILLER,
Att'ys.

(") ELMORE & KING.

Entry at rules.—November rules—Monday, November 7th, 1870.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

The complainant herein, by his solicitor, J. D. Rouse, has this day filed his replication to the answers of Gustave T. Beauregard and other defendants.

Replication.—Filed November 7th, 1870.

290 United States circuit court, 5th circuit & district of Louisiana.
In equity.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

The replication of Cha's Case, receiver of the First National Bank of New Orleans, complainant, to the answers of Gustave T. Beauregard, Joseph Hernandez, Alexander Bonneval, George Binder, and the New Orleans and Carrollton Railroad Company.

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of said defendants, for replication thereunto saith that he doth and will aver, maintain, and prove his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answers are very uncertain, evasive, and insufficient in the law to be replied unto by the repliant, without that, that any other matter or thing in
291 the said answers contained, material or effectual in the law to be replied unto, and herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

(Signed) J. D. ROUSE,
Solicitor.

Alias subpœna, on amended bill in chancery, issued November 9th, 1870, to Thomas P. May.

United States circuit court.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the district of Louisiana, greeting:

You are hereby commanded, as you have heretofore been, to summon Thomas P. May, individually and as member of the firm of G.

292 T. Beauregard, T. P. May, and A. C. Graham, and a citizen of the State of Louisiana, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of December, 1870, then and there to answer an amended bill in chancery, filed against him and others, wherein Charles Case, receiver of the First National Bank of New Orleans, a citizen of the State of Indiana, is complainant, and Thomas P. May and others are defendants.

Herein fail not, and have you then and there this writ, with your endorsement thereon how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, this 9th day of November, in the year of our Lord one thousand eight hundred and seventy, and the 95th year of American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

293 The defendant is hereby notified that he is required to enter his appearance in the clerk's office of the United States circuit court, on or before the first Monday of December, 1870, otherwise the bill may be taken pro confesso.

(Signed) D. URBAN, *Clerk*,
By F. B. VINOT,
D'y Clerk.

Marshal's return on alias subpœna.

Received Nov. 9th, 1870, by the U. S. marshal, and on the 15th day, same month and year, served a copy of the within subpœna in chancery on the within-named Thomas P. May, by delivering the same to him in person in the custom-house building in this city.

New Orleans, Nov'r 15th, 1870.

(Signed) F. A. WOOLFLEY,
D'y U. S. Marshal.

Agreement to print record.

Filed December 17th, 1870.

U. S. circuit court, district of Louisiana. In chancery.

CHA'S CASE, RECEIVER, &c., *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

294 In the above-entitled cause it is hereby agreed between the parties complainant and respondents by their respective solicitors, that the record, including files, exhibits, and testimony taken or to be taken, shall be printed for the use of the court, the parties, and their respective solicitors, and when so printed the same may be bound in cheap form, and when so printed and bound the cost and expense of such printing and binding shall be taxable costs of the cause to be taxed against and paid by the losing party or parties in the case.

(Signed) L. E. SIMONDS,
Sol'r N. O. & C. R. R. Co. and of G. T. Beauregard.
(") LEA, FINNEY & MILLER,
For Hernandez, Binder, Bonneval & the Co.
(") J. D. ROUSE,
Sol. for Complainant.

Order to withdraw record.—Entered and filed Dec'r 17th, 1870.

United States circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

295 On motion to the court, and by consent of parties complainants and respondents, it is ordered that the complainant have leave to withdraw the papers on file in this cause for the purpose of having the same printed, pursuant to the agreement of said parties.

Motion and order to take testimony.—Entered & filed February 4th, 1871.

United States circuit court, dist. of L'a. In chancery.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

On motion to the court by J. D. Rouse, solicitor for complainant, and by Messrs. Lea, Finney & Miller, solicitors for defendants, as appears of record, and upon showing that further time is necessary for the taking of testimony in the above cause, it is ordered that the time for taking testimony in said cause be extended to all parties until the tenth day of March next, up to and including which day said parties may take and file testimony.

296 *Entry at March rules, from chancery docket-book, Monday, March 6th, 1871.—Pro confesso against T. P. May.*

U. S. circuit court, district of Louisiana.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

Thomas P. May, one of the defendants herein, having failed and neglected to appear, plead, answer, or demur to complainant's amended bill of complaint, though duly served with process of subpœna, and the usual delay allowed him by law therefor having expired, at the suggestion of J. D. Rouse, complainant's solicitor, it is ordered that said amended bill of complaint be, and is hereby, taken pro confesso against said defendant, Thomas P. May, to the end that such decree may be made thereupon as shall be just.

Motion and order to extend time for taking testimony.—Extract from the minutes, March 7th, 1871.

Circuit court of the United States, fifth circuit & district of Louisiana, November term, 1870.

297 NEW ORLEANS, *Tuesday, March 7th*, 1871.

Court met pursuant to adjournment. Present, Hon. .

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, and Lea, Finney & Miller, attorneys for the complainant and defendants, it is ordered that the time for taking testimony in this case be extended to the 10th April, 1876.

Motion and order for commission.—Extract from the minutes, March 24th, 1871.

U. S. circuit court, 5th circuit & district of La. In chancery.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant, and upon suggesting that the complainant desires to examine Augustus C. Graham, one of said defendants, who has not been served with process of subpœna, and who resides in New York, and also Stern Chittenden, a witness
298 for complainant, residing in New York, it is ordered that a commission issue to William S. Opdyke, or to Cha's L. Middlebrook, or B. F. Lee, jr., or to Moses B. Maclay, of the city & State of New York, to take the testimony of said Graham and said Chittenden upon the interrogatories and cross-interrogatories now filed.

Commission for complainant.—Issued March 25th, 1871.—Received and filed May 29th, 1871.

United States circuit court, district of Louisiana.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

Circuit court of the United States for the fifth judicial circuit, holding sessions in and for district of Louis'a.

To William S. Opdyke, or to Charles L. Middlebrook, or to B. F. Lee, j'r, or to Moses B. Maclay, of the city and State of New York:

Know ye that reposing special trust and confidence in your integrity and ability, we hereby authorize and require you that you call
299 and cause to come before you Augustus C. Graham and Sterne Chittenden, witnesses for the complainant, and them duly ex-

amine on the annex' interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Charles Case, receiver of the First National Bank of New Orleans, is plaintiff, and G. T. Beauregard and others are defendants, and the same examinations so taken and reduced to writing you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 25th day of March, Anno Domini 1871, and the 95th year of the American Independence.

[SEAL.] (Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *Dy Clerk.*

STATE OF NEW YORK,
City & County of New York:

MAY 20TH, A. D. 1875.

The execution of this commission appears in a certain schedule hereto annexed.

Witness my hand and seal.

300 [SEAL.] (Signed) MOSES B. MACLAY,
Commissioner.

Interrogatories annexed to commission.—Filed March 24th, 1871.

U. S. circuit court, fifth circuit and district of Louisiana.

CHA'S CASE, RECEIVER FIRST NAT'L BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

Interrogatories propounded to Augustus C. Graham, one of the said defendants, and Sterne Chittenden, witness, both residing in the city and State of New York, whose testimony is to be taken in this suit by virtue of the order and commission issued herein in behalf of the complainant.

Interrogatories to be propounded to Augustus C. Graham.

First. Were you interested with Thomas P. May, and G. T. Beauregard in the lease of the New Orleans and Carrollton Railroad? If yea, state what that interest was; whether or not you paid any moneys entitling you to such interest, and how much money you so paid and to whom you paid it.

301 Second. Was the assignment made by you of your interest in said partnership on the 8th of May, 1867, to the Fourth National Bank of New York, in fact absolute or conditional? What was the object of said assignment?

Third. Were you indebted to the First National Bank of New Orleans, the 13th day of May, 1867? If so, to what amount, and had you means to pay the same?

Interrogatories to be propounded to Sterne Chittenden.

First. Are you acquainted with Augustus C. Graham? If yea, how long have you known him?

Second. Do you know what his financial condition was on the 13th or 14th May, 1867; whether he was then solvent or insolvent? And if you have such knowledge, state the particulars thereof, and how you acquired it.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

Cross-interrogatories.

Defendants reserving all legal objections to the interrogatories to and the testimony of A. C. Graham thereby elicited, propound
302 the following:

1st. What was your business prior to your coming to New Orleans, and prior to 1867; were you a principal, or a clerk, or agent, in said business. If a principal, what was your capital, from whence derived? If a clerk or agent, what was your salary or compensation? How long had you been engaged in business either as principal, clerk or agent, prior to your coming to New Orleans, and prior to 1867? Had you not failed in business prior to coming to New Orleans? What year did you come to New Orleans? Have you not failed in business? When did you fail and where?

2d. What was your occupation while you were an officer or connected with the 1st National Bank? Were you engaged in any business? If yea, what business or occupation, where was it carried on, what was its nature, and what was its result? Did you fail in said business?

3d. If you say you paid any money for an interest in the lease of the New Orleans and Carrollton Railroad Company, state the dates
303 of such payments, and the amount paid by you. How were such payments made, by checks or money? Where did you derive the money with which you made such payments? If you say you earned the money in any business, state what business, when and where you made or earned said money. If you say you inherited said money, state from whom you inherited said money. If you say you made said money in speculation, state what speculations, when, where, and with whom carried on, and the result thereof. If you say you paid any money for interest in said lease, state whether you earned said money, or inherited it, or borrowed it, or how you got it.

4th. Had you any pecuniary accounts or relations with Thomas P. May? State what were such accounts or relations; state from what business, or connexion, or speculations the said accounts or relations originated. Enumerate each peice of business you ever had with May, from or out of which originated any pecuniary accounts or relations you may say you had with him.

5th. Did you place in the hands of the 4th National Bank of
304 New York, any property, or securities, or effects? What is the value thereof? What amount has said bank received on said securities, or for said securities or effects? Was there any indebtedness due by you to said bank when said securities or effects were placed in its hands? Is there any indebtedness now due by you to said bank? What is said indebtedness?

(Signed) LEA, FINNEY & MILLER,
Attorneys for defendants, Binder, Bonneval, Hernandez, and the Company.

To S. Chittenden:

State your means of knowledge of each and every fact stated by you.

(Signed) LEA, FINNEY & MILLER,
Att'ys.

Cross-interrogatories to A. C. Graham on behalf G T Beauregard.

1st. Have you not an unsettled account with Thomas P. May; and of how long standing is such account? Has not such account been so standing and unsettled at least since May, 1867?

2d. Have you sued Thomas P. May on such account?

(Signed) L. E. SIMONDS,
Solicitor.

305 No cross-interrogatories to Chittenden.

(Signed) L. E. SIMONDS,
Solicitor of G. T. Beauregard.

No cross-interrogatories.

(Signed) ELMORE & RING,
Att'ys for 4th Nat'l Bank.

(Signed) J. R. BECKWITH,
U. S. Att'y.

Answer of Sterne Chittenden to interrogatories annexed to comm'n.

Deposition of Sterne Chittenden, a witness produced, examined and sworn before me, Moses B. Maclay, the commissioner named in the annexed commission (and a commissioner of the State of Louisiana in the city of New York to take depositions, &c.), on this 20th day of May, A. D. 1871, at my office, number 2 Nassau street, corner of Wall street, in the said city, to be read in evidence in a certain suit now pending in the circuit court of the United States for the fifth judicial circuit Louisiana, wherein Charles Case, receiver of the 1st National Bank of New Orleans, is plaintiff & G. T. Beauregard & others are defendants.

The said Sterne Chittenden having been by me first duly ex-
306 amined & sworn to testify the truth, the whole truth, and nothing but the truth, according to law, deposed & said as follows:

First. To the first direct interrogatory he answers: I am and have been acquainted with A. C. Graham for about three and a half years.

Second. To the second direct interrogatory he answers: As an attorney at law, employed in the prosecution of actions, first against the Fourth National Bank of the city of New York, to which A. C. Graham had about the middle of May, 1867, made an assignment of certain assets & property, & also against him, I acquired, I think, quite thorough knowledge of what had been and was from about the middle of May, 1867, through that year, the financial condition of A. C. Graham. By his assignment of property to the Government of the United States, and to the 4th National Bank of the city of New York, he claimed to have been utterly divested of property, and I have no doubt that he was insolvent on the 13th of May, 1867. The claim of the receiver of the
307 First National Bank of New Orleans, for whom I acted as attorney aforesaid, was a large one, and by examination under judicial order of said Graham, and by very careful inquiry among those who knew him better than I did, even to the extent, if I remember

rightly, of asking a sworn statement from one of them, I concluded him to be, and from the middle of May as aforesaid, if not before, to have been, hopelessly insolvent, and acted accordingly when it would have been largely to my interest to have proven him otherwise, and so I assert him to have been insolvent May 13th, 1867. After the three years or thereabouts intervening, although not having lost sight of his condition, I do not change that conclusion.

(Signed) STERNE CHITTENDEN.

Answers to cross-interrogatories.

To the cross-interrogatories he answers and says: In my employment to prosecute claims mentioned in my examination in chief I encountered
the account of the Fourth National Bank against A. C. Graham
308 and the First National Bank of New Orleans, and so a statement of his dealings with both said banks, and came in contact with the cashier and president of the former, and with the father, the cousin, the brother and the wife of A. C. Graham (and with James T. Brady, as his counsel), at his house and at the Fourth National Bank, as well as at court. Among these persons and at thes· places I endeavored to arrive at the truth. Papers which related to middle of May, 1867, and tended strongly to exhibit the condition of A. C. Graham on and after May 13th or 14th, 1867, and afterwards, were quite freely exhibited to me and seemed to me properly described as means of knowledge.

(Signed) STERNE CHITTENDEN.

Taken, subscribed, & sworn to this 20th day of May, A. D. 1871, before me in the city of New York.

[SEAL.] (Signed) MOSES B. MACLAY,
Commissioner named in annexed Commission, and Commissioner of Louisiana in the City of New York to take Depositions, &c.

309 *Motion and order to show cause why amended bill should not be filed.—Entered & filed March 25th*, 1871.

U. S. circuit court.

CHA'S CASE, REC'R FIRST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

On motion of *of* Lea, Finney & Miller, solicitors for defendants, the New Orleans & Carrollton Railroad Company, Joseph Hernandez, Alexander Bonneval, and G. W. Binder, and upon exhibiting the supplemental and amended answer of said defendants hereto attached, suggesting that said answer has been exhibited to complainant, the allegations in said amended answer are material and important to these defendants, are not made for purposes of vexation or delay, nor calculated to produce any delay in this cause, it is ordered that complainant show cause on morning, the 30th March, 1871, at 11 o'clock, why the original answer should not be amended by the facts, and defences in said supplemental answer, and why the same should not be filed accordingly.

310 *Marshal's return on rule.*

Received by the U. S. marshal March 27th, 1871, and on the same day, month, and year served a copy of the within rule and grounds by delivering the same to Frank Case, clerk, at 36 Natchez street in this city.

New Orleans, March 27th, 1871.

(Signed) S. W. REED,
D'y U. S. Marshal.

Motion and order for commission and affidavit.—Entered and filed March 29th, 1871.

United States circuit court.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

On motion of Lea, Finney and Miller, of counsel for defendants, and on exhibiting the annexed affidavit and interrogatories made a part of this motion, it is ordered by the court that a commission issue to Charles Wallack or Randolph Coyle, residing in Washington City, D. C., to take the testimony of the Secretary of the Treasury, the Register, the Comptroller of the Treasury, John Jay Knox, and other wit-
311 nesses for defendants, residing in Washington City, and that days be allowed for the examination and return of this commission.

Affidavit annexed and filed with motion.

MARCH 29TH, 1871.

G. T. Beauregard, Joseph Hernandez, Alexander Bonneval, and Geo. W. Binder being duly sworn depose and say that the testimony of the witnesses named in the foregoing motion is necessary and material for their defence.

(Signed) G. T. BEAUREGARD,
Pres't of N. O. & Carrollton R. R. Co.
(Signed) J. HERNANDEZ.
(Signed) ALEX. BONNEVAL.
(Signed) GEO. W. BINDER.

Sworn to & subscribed before me this 29th day of March, 1871.

(Signed) F. B. VINOT,
D'y Clerk.

Commission issued to defendants March 29th, 1871, marked L².—Received and filed April 17th, 1871.

United States circuit court.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

312 Circuit court of the United States for the fifth judicial circuit holding sessions in and for the district of Louisiana.

To Charles Wallack or Randolph Coyle, residing at Washington, D. C.:

Know ye, that reposing special trust and confidence in your integ-

rity and ability, we hereby authorize and require you that you call and cause to come before you the Secretary of the Treasury, the Register, the Comptroller of the Treasury, John Jay Knox, and other witnesses for defendants, and them duly examine on the annexed interrogatories, on oath, touching and concerning certain matters and things in a case now depending in the said court, wherein Cha's Case, receiver of the First National Bank of New Orleans is plaintiff and G. T. Beauregard and others are defendants; and the same examinations, so taken and reduced to writing, you certify under your hand and seal, and send enclosed to this court without delay, to be read in evidence on the trial of said cause, and send also this writ.

Witness the honorable Salmon P. Chase, Chief Justice of the
313 Supreme Court of the United States, at the city of New Orleans, this 29th day of March, anno Domini, 1871, and the 95th year of the Independence of the United States of America.

[SEAL.] (Signed) D. URBAN, *Clerk.*
By F. B. VINOT, *Dy Clerk.*

Interrogatories annexed to commission, and filed March 29th, 1871.

U. S. circuit court.

CHA'S CASE, RECEIVER, &C., *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

Interrogatories to be propounded to the Secretary of the Treasury the Register, the Comptroller of the Treasury, John Jay Knox, and other witnesses for defendants residing in Washington City, to be examined under the annexed commission.

1st. What is your official position?

2d. Have you any knowledge of a check drawn by Thomas P. May upon the 1st National Bank of New Orleans, having been given on or about the 14th May, 1867, to the United States, or to an officer or agent of the United States? If yea, state when, to whom, and by whom
314 said check was given, and state its date and amount. In whose possession or custody is said check now? Annex it, if in your possession or custody. If you cannot annex it, state the reason. Annex a copy. Whose signature, as drawer thereof, does such check bear? How do you know said signature? Who is now holder and owner of such check?

3rd. If you say said United States is the holder and owner of said check, state how it acquired the same, and from whom. Did the United States acquire the same for or by reason of any consideration? If yea, state such consideration fully any particularly.

4th. State anything further you may know of service to defendants.

(Signed) LEA, FINNEY & MILLER,
Solicitors.

Cross-interrogatories (annexed to commission) to be propounded to such witnesses as shall be examined upon the above and foregoing interrogatories.

1st. If in answer to the 2d of foregoing interrogatories you say
315 you have knowledge of the check therein inquired of, state to whose order the same is drawn, and state whether or not the sum of ninety-four thousand dollars is credited thereon, or what credit,

if any, is endorsed thereon, or should be endorsed thereon, or applied in reduction of said check.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

Answer of Rob't W. Taylor to the above and foregoing interrogatories.

Circuit court of the United States for the district of Louisiana.

CHARLES CASE, RECEIVER 1ST NATIONAL Bank of New Orleans, pl'tf, *vs.* G. T. BEAUREGARD ET AL., DEF'TS. } No. 5931.

The deposition of Robert W. Taylor, taken by me, Randolph Coyle, of the city of Washington, D. C., under authority of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29, 1871, at the Treasury Department of the United States, at the city of Washington, D. C., on the tenth day of April, A. D. 1871, and intended to be read in evi-
316 dence in the above-entitled cause.

The said Robert W. Taylor, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the first interrogatory: My name is Robert W. Taylor, and I am First Comptroller of the Treasury of the United States.

To the second interrogatory: I have no knowledge of such a draft, though it is possible I may have seen or heard of it. This office has no direct official connection with the draft or its possession or custody, hence I cannot annex it or a copy thereof. I do not know in whose possession or custody such draft now is.

To the third interrogatory: My answer to the preceeding interrogatory renders an answer to this one unnecessary.

317 To the fourth interrogatory: I know nothing further of the matter.

Cross-interrogatories:

To the 1st cross-interrogatory: My answer to the interrogatories in chief render unnecessary any answer to this cross interrogatory.

(Signed) R. W. TAYLOR.

I, Randolph Coyle, commissioner, do hereby certify that by virtue of a commission issued out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, I caused the above-named Robert W. Taylor, deponent in the foregoing deposition, to come before me at the time and place in the caption mentioned; that said deponent was by me carefully examined, cautioned, and sworn according to the laws of the United States, then and there to testify the whole truth; that said deposition was wholly reduced to writing by me in the presence of said deponent, and was carefully read by deponent before being signed by him, and deponent then and there, in my pres-
318 ence, subscribed the same. And I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

Witness my hand and seal at the city of Washington this tenth day of April, 1871.

[SEAL.] (Signed) RANDOLPH COYLE,
Commissioner.

Deposition of John J. Knox.

Circuit court of the United States for the district of Louisiana.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, Pl'tf, *vs.* G. T. BEAUREGARD ET AL, DEF'T. } No. 5931.

The deposition of John Jay Knox taken by me, Randolph Coyle, of the city of Washington, D. C., under authority of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, at the Treasury Department of the United States, in the city of Washington, D. C., on the eleventh day of April, A. D. 1871, and intended to be read in evidence in the above-entitled cause.

319 The said John Jay Knox, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the first interrogatory: Deputy comptroller of the currency.

To the second interrogatory: I have knowledge that a check drawn by Tho's P. May upon the First National Bank of New Orleans was given to me, acting as Assistant Secretary of the United States, on the 13th day of May, 1867, said check being for the sum of three hundred an' fifteen thousand seven hundred and seventy-nine dollars and ten cents ($315,779.10). The said check was dated either the 12th or 13th of May, 1867, and was given to me by the district attorney of the United States at New Orleans, Sam'l H. Torrey, esq'e, who obtained it at my request. I delivered the check to William Bell, esqr., special agent of the Treasury Department at New Orleans, but do not know positively in whose possession the check now is. It is not in my possession

320 or custody, and hence I cannot annex it nor a copy thereof. The check bore the name of Tho's P. May as drawer, of the genuineness of which I am satisfied from May's own admission to me in conversation subsequently to the check's coming into my possession. The United States is the present holder and owner of said check.

To the third interrogatory: The manner in which the United States acquired possession of the said check is stated in my answer to the preceding interrogatory. The United States obtained such possession and ownership for a valuable consideration arising out of the following state of facts, viz:

On the 11th day of May, 1867, upon examination of the books and money in the office of the assistant treasurer of the United States at New Orleans, a deficit of ten hundred and forty-nine thousand two hundred and twenty one and forty-nine one hundredth dollars ($1,049,221$\frac{49}{100}$) was found. At this time William R. Whitaker was the assistant treasurer. Tho's P. May had preceeded him in that office, and he in

321 terms acknowledged his obligation to the United States for the amount of this defalcation, admitting to me that he had obtained public moneys of the United States from his successor in office, knowing

them to be such, and used them for his private ends; and, in addition, that he had, after his retirement from the office of assistant treasurer, delivered to his successor certain drafts of T. P. May & Co. on Oakes Ames, of Boston, amounting to three hundred and sixty thousand dollars ($360,000.00), and of T. P. May on A. C. Graham, of New York, amounting to six hundred thousand dollars ($600,000$\frac{00}{100}$), which drafts were taken and counted as cash by said successor, but were all protested for non-payment, thereby involving the United States in heavy loss. To meet as far as possible his liability to the United States, May turned over to me, the agent of the United States, certain assets, among others the check in question.

To the fourth interrogatory: I have nothing to say in answer to this interrogatory.

Cross-interrogatories:

To the first cross-interrogatory: The check in question was
322 drawn to the order of Thomas P. May. There is not a credit thereon of ninety-four thousand dollars (94,000.00), but there is an endorsement of ten thousand three hundred and seventy-eight $\frac{38}{100}$ dollars ($10,378$\frac{38}{100}$) gold. Sixty-seven thousand dollars ($67,000) in currency and twenty thousand dollars ($20,000.00) in gold were transferred from the First National Bank to the subtreasury of the United States in New Orleans and applied to the reduction of the indebtedness of May to the United States as follows, viz:

Sixty-seven thousand ($67,000$\frac{00}{100}$) currency and *and* a sufficient amount of the gold at the then current premium of thirty-five (35) per centum to make a total amount of eighty thousand ($80,000$\frac{00}{100}$) currency was applied in payment of a check of T. P. May upon the First National Bank, dated February 15th, 1867, which check was found among the assets of the assistant treasurer at New Orleans.

The balance of the twenty thousand dollars ($20,000.00) gold remaining was applied, and should be applied, in reduction of the check of three hundred and fifteen thousand seven hundred and seventy-nine dollars and ten cents ($315,779$\frac{10}{100}$), which has been hereinbefore referred to.

(Signed) JOHN JAY KNOX.

323 I, Randolph Coyle, commissioner, do hereby certify that, by virtue of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, I caused the above-named John Jay Knox, deponent in the foregoing deposition, to come before me, at the time and place in the caption mentioned; that said deponent was by me carefully examined, cautioned, and sworn, according to the laws of the United States, then and there, to testify the whole truth; that said deposition was wholly reduced to writing by me in the presence of said deponent, and was carefully read by deponent before being signed by him; and deponent then and there, in my presence, subscribed the same; and I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

Witness my hand and seal at the city of Washington this eleventh day of April, 1871.

[SEAL.] (Signed) RANDOLPH COYLE. *Comm'r.*

Deposition of George S. Boutwell.

324 Circuit court of the United States for the district of Louisiana.

CHA'S CASE, RECEIVER OF THE FIRST NATIONAL BANK OF N. O., pl't'ff,
vs.
G. T. BEAUREGARD ET AL, D'FT'S. } No. 5931.

The deposition of George S. Boutwell taken by me, Randolph Coyle, of the city of Washington, D. C., under authority of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, at the Treasury Department of the United States, in the city of Washington, D. C., on the eleventh day of April, A. D. 1871, and intended to be read in evidence in the above-entitled cause.

The said George S. Boutwell, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the first interrogatory: Deponent is Secretary of the Treasury of the United States.

To the second interrogatory: He has no personal knowledge of a
325 check, drawn by Thomas P. May upon the First National Bank of New Orleans, having been given on or about the 14th day of May, 1867, to the United States, or to an officer or agent of the United States; and further says that he has not instituted any examination in the Treasury Department for the purpose of ascertain'g whether or not such a check may have been given, or for the purpose of ascertaining any fact in relation to the same.

To the 3rd and 4th interrogatories: That he has no personal knowledge of the matters enquired of in said interrogatories.

GEO. S. BOUTWELL.

I, Randolph Coyle, commissioner, do hereby certify that, by virtue of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29, 1871, I caused the above-named Geo. S. Boutwell, deponent in the foregoing deposition, to come before me at the time and place in the caption mentioned; that said deponent was by me carefully examined, cautioned, and sworn, according to the laws of the United States, then and there to testify the whole truth; that said deposition was wholly reduced to writing by me
326 in the presence of said deponent, and was carefully read by deponent before being signed by him; and deponent then and there, in my presence, subscribed the same; and I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

Witness my hand and seal at the city of Washington this eleventh day of April, 1871.

[SEAL] (Signed) RANDOLPH COYLE,
Comm'r.

Deposition of John Allison.

Circuit court of the United States for the district of Louisiana.

CHA'S CASE, RECEIVER OF THE FIRST NATIONAL BANK OF N. O.,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

The deposition of John Allison taken by me, Randolph Coyle, of Washington City, D. C., under authority of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, at the Treasury Department of the United
327 States, in the city of Washington, D. C., on the twelfth day of April, A. D. 1871, and intended to be read in evidence in the above-entitled cause.

The said John Allison, being by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth in answer to the several interrogatories and cross-interrogatories to the said commission annexed, deposes and says as follows:

To the 1st interrogatory: I am Register of the Treasury of the United States.

To the 2nd interrogatory: I have no direct personal or official knowledge of such a check as is enquired of. The check is not in my custody or possession, and hence I cannot annex it nor a copy. I do not know in whose possession it is.

To the 3rd and 4th interrogatories: My answer to the 2d interrogatory renders any answer to these interrogatories unnecessary.

Cross-interrogatories:

To the first cross-interrogatory: My answer to the direct inter-
328 rogatory's render' unnecessary any answer to this cross-interrogatory.

(Signed) JOHN ALLISON.

I, Randolph Coyle, commissioner, do hereby certify that by virtue of a commission issuing out of the circuit court of the United States for the district of Louisiana, under date March 29th, 1871, I caused the above-named John Allison, deponent in the foregoing deposition, to come before me at the time and place in the caption mentioned, that said deponent was by me carefully examined, cautioned, and sworn, according to the laws of the United States, then and there to testify the whole truth; that said deposition was wholly reduced to writing by me in the presence of said deponent, and was carefully read by deponent before being signed by him, and deponent then and there in my presence subscribed the same, and I further certify that I have no interest, direct or indirect, in the case to which the above deposition relates, and am not the agent or attorney of any person having any interest therein.

329 Witness my hand and seal at the city of Washington, this twelfth day of April, 1871.

[SEAL.] (Sign'd) RANDOLPH COYLE,
Comm'r.

I, Randolph Coyle, commissioner named in the within commission, do hereby certify that I have taken the annexed depositions of Robert

W. Taylor, John Jay Knox, Geo. S. Boutwell, and John Allison, which I hereby transmit to the circuit court of the United States for the district of Louisiana, together with the said commission in obedience to the terms thereof.

Witness my hand and seal at the city of Washington, this thirteenth day of April, 1871.

[SEAL.] (Signed) RANDOLPH COYLE,
Comm'r.

Order—Rule made absolute.—Extract from the minutes, March 30th.

Circuit court of the United States, November term, 1870.

NEW ORLEANS, *Thursday, 30th March*, 1871.

Court met pursuant to adjournment.

330 Present, Hon. W. B. Woods, circuit judge;
" " E. H. Durell, district "

CHA'S CASE, RECEIVER, &C., *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

The motion made by the defendants on the 25th instant was called up (Lea, Finney & Miller for defendants; Case & Rouse, for complainant); when, after hearing argument, it is ordered by the court that the application be granted and that the supplemental and amended answer be filed as prayed for.

Supplemental and amended answer of the New Orleans & Carrollton Railroad Co. Filed by order of court, March 30th, 1871.

U. S. circuit court, dist. of L'a.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, *vs.* THE NEW ORLEANS & CARROLLTON RAILROAD Company et al. } No. 5931.

The supplemental and amended answer of the New Orleans and Carrollton Railroad Company, a corporation established by law, dom-
331 iciled in Orleans, and Joseph Hernandez, Alexander Bonneval, and George Binder, defendants herein, says:

These defendants aver that on the 14th May, 1867, the First National Bank of New Orleans was indebted to Thomas P. May in the sum of three hundred and fifteen thousand seven hundred and seventy-nine dollars, being a balance of the account of said Thomas P. May with said bank, arising from deposits made by him in said bank, and from other credits to which he had become entitled in and from said bank as more fully appears by a copy of said account filed herewith as exhibit T, to which reference is craved as part hereof.

That the only debt then due on said 14th May, 1867, by said Thomas P. May to said bank, was the sum of two hundred and thirty-seven thousand and eight $\frac{89}{100}$ dollars, arising from and consisting of the overdraft paid by said bank upon the checks of G. T. Beauregard, lessee, said overdraft being seventy-two thousand and eight $\frac{89}{100}$ dollars, the

credit of forty thousand dollars entered by said bank to the credit of G. T. Beauregard, lessee, of date 15th September, 1866, the amount
332 of the bill of exchange drawn by Thomas P. May upon A. C. Graham, on or about the 19th March, 1867, and entered by said bank to the credit of G. T. Beauregard, lessee, of date 19th March, 1867, said overdraft, said forty thousand dollars, and the amount of said bill of exchange making up the sum of $237,008 $\frac{89}{100}$, for which recovery is sought by complainant in his bill, all of which was paid by said bank upon the checks of G. T. Beauregard, lessee, and was used for the benefit of, and in the business of the partnership of Thomas P. May, A. C. Graham, and G. T. Beauregard, as set forth in the original answer herein filed, and for all of which said Thomas P. May was indebted and liable to said bank.

That on the 14th May, 1867, said Thomas P. May undertook to assign to the United States said balance of three hundred and fifteen thousand seven hundred and seventy-nine ($315,779.00) dollars then standing to his credit on the books of said bank, as appears by reference to the act of 14th May, 1866, filed with complainant's bill as Exhibit N, to
333 which reference is craved; that said United States received said assignment, and a check drawn by said May upon said bank for said balance with the knowledge of his said indebtedness to said bank; that on the 31st October, 1867, the United States, through Edward Jordan, Solicitor of the Treasury, ex'cuted an obligation to these respondents, Joseph Hernandez, Alexander Bonneval, and George Binder, which is filed with complainant's bill as Exhibit J, in which among other things it is stipulated, "that the United States should protect the purcha'rs against, and save them harmless from, any claim which may at any time be set up against them personally, or against the said copartnership, or the property, rights, and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or its assigns, for the recovery of or in reference to an overdraft of seventy-two thousand and eight $\frac{89}{100}$ dollars and a promissory note for forty thousand dollars, in all one hundred and twelve thousand and eight $\frac{89}{100}$ dollars, which apparently stands to the credit of G. T. Beauregard as lessee of the New Orleans and Carrollton Railroad, but which in truth and re-
334 ality are exclusively due and owing to said bank by the said Thomas P. May"; that said bill of exchange for $125,000.00 should have been charged by said bank to said May, and debited to him in account as of the day of its date; that upon said assignment and check of May for $315,779.00 the United States took from said bank the sum of ninety-four thousand dollars to which it was not entitled, $80,000.00 of said $94,000.00 being debited to said May in said account herewith filed as of date the 15th May, 1867.

Now, these defendants aver that by reason of the facts herein set forth on said 14th May, 1867, compensation had taken place between said debt of $315,779.00 due by the bank, and said debt of $237,008.89 dollars due by Thomas P. May to said bank, and for which the complainant asks for a decree in this suit, was compensated on said 14th May, 1867, and should be deemed to be extinguised by said debt of $315,779.00, said balance due by said bank to said May; that no portion of said $315,779.00 has ever been paid by said bank to said May or to the United States, except said sum of $94,000.00 wrongfully taken by said United States
335 as aforesaid, and said United States still hold said check and assignment of said $315,779.00, all of which these defendants are ready to aver and prove.

Wherefore these defendants pray the leave of the court to file th's

amended and supplemental answer, that the parties to this suit be served with a copy hereof, and they pray to be herein dismissed with costs and as prayed for in their original answer.

(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.
(") LEA, FINNEY & MILLER,
Solicitors for Def'ts.
(") J. HERNANDEZ.
(") ALEX. BONNEVAL.
(") G. W. BINDER.

G. T. Beauregard, president of the New Orleans and Carrollton Railroad Company, A. Bonneval, Jas. Hernandez, and G. Binder, being duly sworn, depose and say that all the matters and things in the foregoing answer contained which are stated upon the personal knowledge of these affiants are true and correct, and those stated upon the information of others they believe to be true.

(Sig'd) G. T. BEAUREGARD,
President N. O. & C. R. R. Co.
ALEX. BONNEVAL,
J. HERNANDEZ, AND
G. W. BINDER.

Sworn to and subscribed before me this 25 day of March, 1871.
F. B. VINOT,
D'y Clerk.

Marshal's return.

Rec'd March 31st, 1871, by the U. S. marshal, and on the 1st day April, 1871, served a copy of the within supplemental & amended answer on Cha's Case, rec'r, by delivering the same to him in person at No. 36 Natchez street, in this city.
New Orleans, April 1st, 1871.

S. W. REED,
D'y U. S. Marshal.

336 EXHIBIT T.—*Filed with amended answer; also marked B¹. March 30th*, 1871.

United States circuit court.

CHAS. CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

DR. *Tho's P. May in account with the First National Bank of New Orleans.* CR.

(Individual ledger K to Z No. 2, folio 168.)

1864.				1864.			
April	7.	To checks	15,000	April	2.	By cash	15,000
	18.	"	175,000		11.	"	175,000
May	23.	"	40,000	May	20.	"	50,000
	26.	"	7,000		23.	"	400,000
June	6.	"	40,000		24.	"	200,000
	9.	"	60,000	June	9.	"	250,000
	10.	"	28,000		"	"	80,000
	11.	"	50,000				

DR. *Tho's P. May in account with the First National Bank of New Orleans.* CR.

(Individual ledger K to Z No. 2, folio 168.)—Continued.

1864.				1864.			
June	18	To checks	5,000	June	24.	By cash	7,000
	20.	"	127 366	July	9.	"	40,000
	23.	"	50,000	Aug't	1.	"	25,971 28
July	13.	"	50,000	Octo.	5.	"	351,346 44
Sept.	1.	"	65,971 28		8.	"	41,000
	28.	"	250,000	Nov'r	16.	"	200,000
Oct.	4.	"	100,000				
	5.	"	100,000				
	7.	"	200,000				
	8.	"	100,000				
	14.	"	2,502 59				
	24.	"	25,000				
	26.	"	75,000				
	29.	"	30,000				
	31.	To balance	104,000				
			139,377 85				
			1,835,217 72				1,835,217 72
1864.				1864.			
Dec.	13.	To checks	13,500	Nov'r	16.	By balance	139,377 85
	23.	"	7,035	Dec.	12.	" cash	6,783
	24.	"	3,748			"	3,094 11
	27.	"	101,201		13.	"	20,000
	28.	"	500		16.	"	100,000
	31.	"	1,000	1865.			
1865.				Jan'ry	4.	"	250,000
Jan'ry	3.	"	1,933 18		6.	"	150,000
	4.	"	236,000		19.	"	2,367 03
	6.	"	1,000				
	7.	"	5,000				
337	1865.						
	January	9. To checks	50,000				
	12.	"	6,000				
	14.	"	15,000				
	16.	"	204,000				
	21.	"	4,400				
		To balance	22,005 81				
			671,621 99				671,621 99
1865.				1865.			
Jan'ry	24.	To checks	5,259 90	Jan'ry	23.	By balance	22 005 81
Feb'ry	7.	"	5,000	Feb'ry	3.	" cash	56,665 17
	10.	"	500		4.		1,194 31
		To balance	69,095 39				
			79,855 29				79,855 29
1865.				1865.			
Feb'ry	14.	To checks	69,095 39	Feb'ry	14.	By balance	69,095 39

DR. *Tho's P. May in account with the First National Bank of New Orleans.* CR.

(Folio 169.)

1865.				1865.			
Nov'r	30.	To checks	7,275 27	Nov'r	30.	By cash	24,500
Dec.	1.	"	500	Dec.	7.	"	8,698 20
	2.	"	329 70		8.	"	5,928
	6.	"	500		9.	"	19,802 77
	"	"	2,000				
	"	"	2,000				
	8.	"	179 92				
	11.	"	2,000				
	13.	"	513				
	14.	"	1,312 50				
	"	"	1,475 87				
	15.	"	5,168 60				
	16.	"	1,283 33				
	18.	"	1,000				
	19.	"	562 50				
	20.	"	100				
	23.	"	1,536				
	28.	"	900				
	"	"	310				
	"	"	605				
	"	"	125				

DR *Tho's P. May in account with the First National Bank of New Orleans.* CR.

(Folio 169.)—Continued:

1865.							
Dec.	29.	To checks	320				
	"	"	5,000				
	30.	"	392 53				
		Balance to ledger A to M No. 2	23,539 75				
			58,928 97				58,928 97
338	1866.			1865.			
Jan'ry	2.	To checks	1,722 48	Jan'ry	1.	By bal'e from ledg'r 1	23,539 75
	"	"	9,750		3.	" cash	206 66
	3.	"	250		4.	"	10,000
	4.	"	200		30.	"	25,000
	5.	"	3,200				
	6.	"	150				
	13.	"	170				
	16.	"	4,281 40				
	18.	"	359 75				
	20.	"	1,000				
	26.	"	3,751 21				
	28.	"	4,251 17				
	30.	"	201 12				
	"	"	14,211 50				
		Balance	15,247 78				
			58,746 41				58,746 41
1866.							
Febr'y	3.	To checks	652	Jan'ry	30.	By balance	15,247 78
	"	"	400	Feb'ry	19.	" cash	920 17
	5.	"	200		20.	"	4,371 42
	7.	"	1,119 50		23.	"	3,000
	8.	"	12,500		27.	"	2,000
	10.	"	177 62		28.	"	5,000
	19.	"	79 35	M'ch	1.	"	2,500
	21.	"	160 40		3.	"	27,000
	27.	"	100		20.	"	2,518 75
M'ch	1.	"	907 04		21.	"	9,000
	3.	"	11,199 75		23.	"	1,600
	5.	"	9,100		31.	"	2,000
	"	"	774 50	April	7.	"	10,000
	6.	"	6,371 44		18.	"	2,000
	7.	"	224 47		19.	"	6,000
	8.	"	250	May	4.	"	83,930
	9.	"	562 50		8.	"	30,000
	"	"	10,750		25.	"	10,000
	10.	"	108 50		30.	"	500
	15.	"	200	June	7.	"	2,280
	16.	"	54 50		11.	"	7,695
	2[illegible].	"	2,518 75		12.	"	15,000
	22.	"	8,488 96				
	24.	"	740				
	26.	"	311 50				
	"	"	413 90				
	29.	"	2,500				
April	7.	"	75				
339	1866.						
	April 9.	To checks	400				
	10.	"	6,000				
	13.	"	60				
	14.	"	238 10				
	"	"	3,796 45				
	16.	"	20,089 73				
	18.	"	445 50				
	19.	"	48 50				
	27.	"	200				
	28.	"	2,061 15				
May	3.	"	409 99				
	7.	"	117 17				
	"	"	100				
	8.	"	87,000				
	12.	"	318 38				
	14.	"	500				
	15.	"	291 01				
	16.	"	4,425				
	"	"	200				
	18.	"	4,000				
	19.	"	351 98				
	21.	"	500				
	22.	"	740				
	23.	"	254 80				

DR. *Tho's P. May in account with the First National Bank of New Orleans.* CR.

(Folio 169).—Continued.

1866.					1866.		
May	25.	To checks	8,099				
"	"	"	200				
	29.	"	80				
June	2.	"	745 27				
	5.	"	190				
	9.	"	26,000				
	11.	"	283 10				
	12.	"	61				
		Balance	3,417 41				
			242,563 12				242,563 12
June	20.	To checks	1,287 50	June	12.	By balance	3,417 41
	22.	"	500		23.	" cash	35,140
	23.	"	25,000				
	26.	"	200				
	27.	"	180 40				
	29.	"	200 00				
"	"	"	76				
	30.	"	10,536				
July	2.	"	397 50				
		Balance	180 01				
			38,557 41				38,557 41
340	1866.						
	Sept. 3	To checks	26 36	July	2.	By balance	180 01
Sept.	6.	To checks	200,000		3	" ex	2,500
	7.	"	200,000	Sept.	6.	" "	200,000
	8.	"	100,000		7.	" "	200,000
	10.	"	100,000		8.	" "	588,643 29
	11.	"	150,000	Octo.	22.	" "	95,000
	12.	"	150,000				
	13.	"	88,643 29				
	25.	"	494 35				
Oct.	13.	"	20,255 73				
	15.	"	15 50				
	16.	"	100				
		Balance	74,178 43				
			1,086,323 30				1,086,323 30
Oct.	23.	To checks	540	Octo.	22.	By balance	74,178 43
"	"	"	40,000	Nov'r	8.	" cash	250
	24.	"	1,150		19.	"	9,115
	25.	"	10,350		27.	"	*4,019 03
	"	"	1,000	Dec.	1.	"	5,000
	27.	"	110		3.	"	95
	29.	"	540				
Nov'r	23.	"	100				
	26.	"	129 01				
	27.	"	14,211				
	28.	"	5,100				
Dec.	1.	"	1,300				
	3.	"	101 75				
		Balance	18,105 70				
			92,657 46				92,657 46
Dec.	5.	To contra, folio 881*	4,019 03	Dec.	3.	By balance	18,105 70
"	"	checks	1,547 50				
		Balance	12,539 17				
			18,105 70				18,105 70
Dec.	6.	To checks	193 40	Dec.	5.	By balance	12,539 17
	7.	"	154		27.	" gold	1,700
	8.	"	75 50		31.	"	225,000
	14	"	105				
	15.	"	11,030				
	18.	"	250				
	21.	"	200				
	24.	"	418 10				
	27.	"	210				
"	"	"	9,627 64				
	31.	"	1 5				
"	"	"	25,000				
		Balance to l dg'r, M to Z	191,868 53				
			239,239 17				239,239 17

Dr. *Tho's P. May in account with the First National Bank of New Orleans.* *Cr.*

(Folio 169).—Continued.

341	1867.				1866.		
Jan'ry	2.	To checks, gold	1,700		Dec'r 31.	By bal. from ledg., A to M.	191,868 53
		L. T	30,000		1867.		
		"	130		Jan'ry 10.	" ex	25,200
	3.	"	67,000		12.	" cash	1,000
		"	65,200		14.	"	50,000
		"	20,000		24.	"	4,000
		"	45,000		26.	" ex	4,633 34
		"	75		Feb'ry 6.	"	13,250 00
		"	1,000				
		"	168 65				
		"	20,000				
		"	15,000				
		"	15,000				
		"	255 57				
		"	1,000				
		"	3,407 21				
		"	3,000				
		"	3 86				
		"	3 30				
		Balance	2,008 28				
			289,951 87				
					1867.		
Febr'y	16.	To checks	500		Feb'ry 14.	By balance	2,008 28
		"	15,000		15.	" cash	15,000
	18.	"	900		25.	"	100,000
	23.	"	337 50		27.	" exc	4,637 77
	25.	"	100,000		M'ch 7.	" "	100,000
	27.	"	4,637 77		28.	" "	4,533 33
M'ch	2.	"	1,000		30.	" cash	500,000
	5.	"	1,262 30		April 18.	" "	200,000
	7.	"	100,000		26.	" "	135,000
		"	50		27.	" "	125,000
	25.	"	900				
	28.	"	4,533 33				
April	1.	"	500,000				
	8.	"	4,000				
	11.	"	500				
	13.	"	2,016 75				
	16.	"	2,880 50				
	18.	"	250				
	22.	"	100,000				
		"	654 75				
	23.	"	1,025 75				
	27.	"	4,533 33				
		Balance	341,197 40				
			1,186,179 38				1,186,179 38
342	1867.				1867.		
April	29.	To checks	30,530		April 27.	By balance	341,197 40
	30.	"	2,000		29.	" cash	5,175
		"	1,000		May 4.	"	6,760
		"	642 65			"	1,000
May	1.	"	350		6.	"	150
	3.	"	1,000				
	4.	"	1,913 61				
	9.	"	1,066 50				
	15.	"	80,000 00				

343 United States circuit court in chancery.

CHA'S CASE, RECEIVER, &C., *vs.* G. T. BEAUREGARD & ALS. } No. 5931.

Test'y taken before Hon'l I. B. Weller, U. S. Commissioner.

NEW ORLEANS, *April 4th*, 1871.

Present, I. D. Rouse, esq'r for complainant; Mess'rs Lee, Finney & Miller, for def'ts.

Page.
Testimony of Peter McBride 2
" " G. T. Beauregard 30

Specially reported by C. W. Colton, stenographer.

Testimony filed April 17, 1871.

344 PETER McBRIDE sworn and examined.

By M'r Miller, on behalf of the defense:

Q. Were you connected with the Carrollton Railroad Co. in 1866 and 1867?

A. Yes, sir.

Q. From the time of the lease of Beauregard?

A. Yes, sir; and previous to that.

Q. The lessee kept an account with the First National Bank?

A. Yes, sir.

Q. Did he keep any other account with any other bank?

A. No, sir.

Q. All the earnings of the road were deposited in that bank?

A. Yes, sir.

Q. And all its means were deposited in that bank?

A. Yes, sir.

Q. Look at this document and state whether it is the account kept with the First National Bank. (Shown account annexed to bill of complaint marked "Exhibit G.")

A. That is the account.

Q. Examine that account and state at what period the first overdraught was made.

A. About the middle of September, or the fourteenth of Sep-
345 tember, the first overdraught occurred.

Q. From the organization of the partnership down to the middle of September, 1866, had the lessee made deposits in the bank?

A. Yes, sir; as is shown by the account.

Q. Please direct your attention to the document which is filed in the record, marked "Schedule No. 1," and state whether that shows the receipts and the expenditures of the partnership from the date of the commencement of the partnership up to September 6th, 1866.

A. Yes, sir; that is the statement showing the receipts and expenditures within the time mentioned.

Q. During that period of time (from the date of the partnership up to September 6th, 1866) what payments were made upon property purchased for account of the partnership?

A. There was a cash payment on property on the corner of Napoleon and S't Charles streets, purchased from widow S. J. Peters, on the 28th April, 1866, of six thousand dollars ($6,000.00). There was also a cash payment made on the square bounded by S't Charles, Apollo,
346 Berlin, and Milan streets, as per act of purchase thereof from S. A. Kohn, of two thousand six hundred and sixty-six dollars and sixty-five cents ($2,666.65). The date of the payment is April 30th, 1866.

Q. You made the payments yourself, did you not?

A. The treasurer made the payments. I had the books and entered all the payments accordingly.

Q. Who was the treasurer?

A. M'r Proctor. There was also some property purchased from W. C. Raymond, in the square bounded by S't Charles, Apollo, Berlin, and Napoleon streets, on which a cash payment was made of four thousand one hundred and sixty-six dollars and sixty-five cents ($4,166.65). The date of the payment is May 5th, 1866. There was also a purchase of the hotel at Carrollton, on which a cash payment was made on the thirtieth of June, 1866, of eight thousand six hundred and sixty-six dollars and sixty-six cents ($8,666.66).

Q. Please state what the earnings of the road were during the same period.

347 A. I have verified this Schedule No. 1 with my books and found the items all correct. There was received from capital invested and contributed to partnership eighty-eight thousand dollars ($88,000.00), and from the earnings of the road sixty-five thousand two hundred and sixty-three dollars and ninety-five cents ($65,263.95), during that period beginning on April 16th, 1866, and ending September 6th, 1866.

Q. Direct your attention to Schedule No. 2, which runs from September 6th, 1866, to May 11th, 1867, and state whether it shows the receipts and expenditures of the partnership during that period.

A. Yes, sir, it does; with the exception of an error which has been made in the date of payment, which does not amount to anything.

Q. There are included in that schedule some notes paid by the company on property, are there not?

A. Yes, sir.

Q. Will you produce those notes? (Witness here produced certain documents.)

Q. This note was paid by the company for the property during mentioned, was it not? (Shown paper.)

348 A. Yes, sir.

(M'r Miller offered said note in evidence, marked "E F.")

Q. This note was paid by the partnership on the third of May, 1867?

A. Yes, sir; there is another note that we paid for the property purchased from M'r Raymond, which I have not got. I have not the one-year note. I suppose the notary has it. I have the two-year note with me.

Q. Do you know of the payment of the first year's note?

A. Yes, sir; I know that the partnership paid the second payment on the property purchased from W. C. Raymond, amounting to four thousand one hundred and sixty-six dollars and sixty-six and two thirds cents ($4,166.66⅔).

Q The date of the payment was when?

A. May 8th, 1867. The partnership also paid a cash payment on property purchased in December 17th, 1866, from the New Orleans and Carrollton Railroad Co. Those were all the payments on property during that period.

Q. At the date of the conveyance of T. P. May to the United

349 States, in May, 1867, was or was not the partnership indebted for property or for any other purposes?

A. Yes, sir; here is a list of notes and bills that were due at the time, (referring to Schedule No. 3).

Q. What was the amount of the indebtedness of the partnership at that date, May, 1867?

A. It amounted to one hundred and seventeen thousand seven hundred and twenty-five dollars and eighty cents ($117,725.80), as is shown by Schedule No. 3.

Q. In this Schedule No. 3 are references to various notes; have you got those notes?

A. I have some of them with me. (Witness here produced four notes.)

Q. These were notes for property?

A. Yes, sir.

Q. There are two other notes mentioned in Schedule No. 3, which were given for the hotel at Carrollton; have you got those notes?

A. Yes, sir. (Witness here produced the other notes.) The company having sold the property, gave up the notes to be cancelled.

Q. There is also another note referred to for ($3,093.33⅓) three
350 thousand and ninety three dollars and thirty-three and a third cents.

(Witness produced said note, marked "G H.")

Q. Are these notes which you have produced the notes referred to in Schedule No. 3.

A. Yes, sir.

Q. By whom were they paid?

A. They were paid by the present organization.

Q. When?

A. The note for the horse-station property was paid on February 25th, 1870.

Q. Here is a note for $4,333.33, marked "H L;" by whom was that note paid?

A. It was paid by the present company.

Q. Whom do you mean by the present company?

A. The New Orleans and Carrollton Railroad Company, as per act of fusion.

Q. Here is another note for $4.333.33, I K, payable one year after date; by whom was that note paid?

A. It was paid in the same manner and by the same parties.

Q. Here is another note marked "I J," dated December 17th,
351 1866, payable two years after date; by whom was it paid?

A. It was paid by the present company on February 25th, 1870.

Q. Here is another note for $4,333.33, marked "H I," dated December 17th, 1866, payable in two years. Was that note also paid?

A. It was paid by the present company.

Q. In whose possession are these notes now?

A. They are held by the company.

Q. Direct your attention to the note for $8,666.66. Has that note been paid?

A. Yes, sir.

Q. By whom?

A. It was paid by the present company.

Q. Direct your attention to the note for $4,166.66, F G, dated May 5th, 1866.

A. That was paid by the company, also.

(The six notes produced and referred to by the witness were here offerred in evidence by M'r Miller and marked "F G," "G H," "H I," "I J," "J K," and "K L.")

Q. There are various other items referred to in Schedule No. 3?
352 A. Yes, sir.

Q. Please state whether those items have been paid?

A. Yes, sir; they have.

Q. By whom?

A. By the company.

Q. Subsequent to what date were all the amounts paid for notes em-

braced in Schedule No. 3; were they all paid from June or July, 1867?

A. From about that time.

Q. They were all paid from July, 1867, up to what date?

A. Up to 1868. Some of these notes have only been paid last year, however?

Q. All these items have been paid by the present company, as created under the act of fusion?

A. Yes, sir.

Q. Let me direct your attention to the overdraughts made by this partnership on the First National Bank. Please state how the partnership treated the money derived from the First National Bank from these overdraughts. How did they consider that money, and how did it appear upon the books of the partnership?

353 (M'r Rouse objected on the ground that the recollection of the witness was not the best evidence; that the books themselves should be produced.)

A. It was treated as capital invested by these parties.

Q. Were you aware of any solicitation or any proposition ever having been made by Beauregard, as lessee, to the First National Bank for advances of money?

A. No, sir; I am not aware of anything.

Q. In what mode was the partnership enabled to obtain the money that was got from the First National Bank upon these overdraughts, so far as your knowledge goes?

A. M'r May had promised to make the overdraught good.

Q. Are you aware of any intercourse between Gen'l Beauregard, lessee, or any other officer of the company, with that bank with reference to getting that money? Did Beauregard make any application for it?

A. No, sir; not to my knowledge.

Q. Did you ever make any application for it yourself?

354 A. No, sir.

Q. Did the partnership of May, Graham and Beauregard keep any other bank account except this one of the First National Bank?

A. No, sir.

Q. What was the condition of the Carrollton Railroad in respect to completeness at the date of the conveyance made by May to the United States?

A. It was not entirely complete?

Q. Were you familiar with the condition of the road at that time, and the expense it required to complete it.

A. I was not familiar with that department of it.

Q. In the interim between the conveyance by May to the United States, in May, 1867, and the act of fusion, which was in October of that year, have you any knowledge of any payments made by the United States upon this railroad or on account of it?

A. I believe they paid rent for one or two months. That was all.

Q. Do you know that to be the fact?

A. Yes, sir. I forget the time, but I know that they paid it

355 several times.

Q. All of these notes that you now produce are held by the present company?

A. Yes, sir.

Cross-examined by M'r Rouse:

Q. The note paid May 3rd, 1867, which you have mentioned as being

a mortgage note upon the Kohn property for $2,166,$^{66}_{100}$, was paid by a check upon the First National Bank, was it not?

A. Yes, sir, I presume so.

Q. If you know the fact of payment, you know how it was paid?

A. We had no other account to get it from. I do not suppose there is any doubt that it was paid by a check on that bank.

Q. If you know the fact of payment, you know how it was paid?

A. It could not have been paid in any other way.

Q. The note which you have mentioned as having been paid on the 8th of May, 1867, being a mortgage note on the property purchased from W. C. Raymond, was also paid by check on the First National Bank, was it not?

A. Yes, sir; I presume that it was.

356 Q. What was the amount of that note with interest?

A. Forty-five hundred dollars.

Q. And also the payment made upon the horse station property, amounting to $8,666.66, was it not also paid by a check on the First National Bank?

A. Yes, sir.

Q. The partnership in the name of G. T. Beauregard, lessee, were in the habit of drawing checks on the First National Bank whenever they had occasion to do so without regard to the amount of the balance?

A. The lessee always looked at that and reported the fact to the parties that furnished the money, according to the notarial agreement.

Q. Did you ever hear him make any such reports?

A. I know it to be a fact that it has been reported by the treasurer.

Q. When?

A. At some time when the overdraft began.

Q. State the time and place.

A. One time it was in September. (The witness here referred to certain memoranda.)

Q. Is that memorandum in your own handwriting made at the time?

357 A. No, sir; it is in September that I recollect of a note being sent to M'r May, relative to the condition of the bank account at the time.

Q. Where is that note?

A. Here it is (producing paper).

Q. Is this a copy of it?

A. Yes, sir.

Q. Did you make this copy?

A. No, sir.

(M'r Rouse objected to the introduction of the document.)

Q. Personally you know nothing of it?

A. I only know what I heard. I had nothing to do with the furnishing of the money matters at all. I simply got my entries from the treasurer.

Q. You have heard M'r Beauregard say that M'r May and M'r Graham had furnished a large amount of capital to him to carry on the partnership?

A. No, sir; I never heard him say it. I know it from the fact that they deposited money in the bank, for the use of the lessee, to carry on the improvements of the road. It is on the books.

Q. Do you know it in any other way?

358 A. No, sir; that is the only way, I believe, I knew it.

Q. Did you ever hear M'r Beauregard complain that Graham or May did not furnish the capital, according to the contract?

A. I have heard General Beauregard's representative say so.

Q. I am not asking about his representative. Did you ever hear him himself complain that they had not furnished the capital, according to the agreement?

A. I have heard the treasurer complain.

Q. Did you ever hear General Beauregard complain?

A. No, sir. General Beauregard was absent during most of the time, and the treasurer had his power of attorney at one time and M'r May at another time. The treasurer was the only one I heard complaining.

PETER McBRIDE.

Sworn to 4 April, 1871.

JOHN B. WELLER, *U. S. C.*

359 G. T. BEAUREGARD sworn and examined on behalf of the defense.

(M'r Rouse reserved all legal objections to the testimony of this witness.)

By M'r Miller:

Q. You were the lessee of the New Orleans & Carrollton Railroad from the company in 1866?

A. Yes, sir.

Q. You afterwards became connected with May and Graham?

A. Yes, sir, as per act before the notary Amadeé Ducatel.

Q. How long did that connection continue with May and Graham?

A. Until May failed and dissolution took place.

Q. That was when?

A. I do not recollect the date now exactly. It was in May, 1867, I believe.

Q. From the date of the lease up to the dissolution of the partnership in May, 1867, will you please state what part, if any, was taken by M'r May in the business of the partnership?

A. According to the terms of the agreement (as will be seen by reference to that agreement) he and May were to furnish all the
360 funds necessary to carry on the concern *a* undertaking up to the amount of three hundred thousand dollars, at stated amounts per month. The agreement will show that.

Q. What actual part did May take in the business of the partnership?

A. He furnished the funds according to the agreement, and attended to the financial department of the concern.

Q. What part, if any, did M'r Graham take in the business of the partnership?

A. That I cannot say, because he made his arrangements with M'r May.

Q. Did he exercise any control over the partnership himself?

A. Not that I am aware of.

Q. Had you any connection with or control over the financial management of the partnership?

A. None in the least, and I did not wish to have any.

Q. What was your department during the existence of the partnership?

A. To carry out the changes necessary, or which were in contempla-

tion on the road, and to attend to the management and recon-
361 struction of the road.

Q. Who had the general superintendence of the working of the road?

A. It belonged to my department, but I had a superintendent to execute my orders.

Q. Then, in describing your duties, you mean to say that you confined yourself to that entirely?

A. I confined myself entirely to my legitimate duties, which were to attend to the management of the concern; what might be called the "out-door management."

Q. During the existence of the partnership of May, Graham, and Beauregard, were there any profits made?

A. None at all.

Q. What was the condition of the road in respect to indebtedness in May, 1867?

A. It was indebted; the books will show to what amount.

Q. Were you compensated for your services by the partnership of May, Graham, and Beauregard?

A. I received five thousand dollars a year from the receipts of the road.

362 Q. Did you receive any other compensation or profit from your connection with them?

A. None at all,

Q. Was your account, as lessee of this railroad, with the First National Bank of New Orleans opened at that bank at the instance or request of any one?

A. It was understood at the time that I was to keep the accounts there.

Q. Understood with whom?

A. Understood between us.

Q. Understood with whom?

A. With M'r May and M'r Graham.

Q. Was that bank selected by either of you or all of you? If so, by whom was it selected?

A. I have no idea. I do not recollect now by whom it was selected; but it was not selected by me. It was selected between us.

Q. During the existence of the partnership of May, Graham, and Beauregard, and during the existence of the First National Bank, had you any intercourse or communication with any of the officers of that bank in reference to furnishing the partnership with money?

A. No, sir; and I was careful not to have any, because it did
363 not come within my province.

Q. In what mode was the partnership of May, Beauregard, and Graham enabled to obtain money from that bank upon these checks?

A. By an arrangement made between M'r May and the treasurer of the company. He authorized him to overdraw when there was no balance, and promised that he would make it good.

Q. Who was the treasurer of the company?

A. M'r S. R. Proctor, who is still treasurer.

Q. Were you consulted, or had you any knowledge of that arrangement at the time?

A. I was so informed.

Q. Were you informed before the arrangement was made or after the arrangement was made?

A. After the arrangement was made.

Q. Was that arrangement made in consequence of any efforts or endeavors made by yourself?

A. None at all. I did not trouble myself at all about the financial department.

Q. With whom did that arrangement originate?

364 A. That I cannot say. Not with me.

Q. On the 15th of September, 1866, were you in the city or absent?

A. I was in Europe.

Q. When did you go and how long did you remain away?

A. I left about the beginning of May, and I did not return until about the end of October.

Q. Had you any knowledge of a credit which was entered by that bank upon a note of forty thousand dollars drawn by M'r May as your per pro. at the period when the discount was made?

A. Not until my return.

Q. You became informed of it on your return?

A. Yes, sir.

Q. You had no knowledge of that discount on that note until your return?

A. No, sir; and I was informed of it by the treasurer of the company. M'r May did not speak to me on the subject, and has not to this day.

Q. Was that discount given by the bank in consequence of any effort made by yourself?

A. No, sir.

365 Q. When you were informed of it upon your return, did you manifest your assent or dissent to it?

A. I certainly did not approve of it, but at the same time I said nothing to M'r May on the subject, because it did not belong to my department. I did not know what his views were. I certainly did not approve it as far as my feelings went.

Q. In reference to the transaction of the First National Bank in entering up the credit of one hundred and twenty-five thousand dollars to this partnership in March, 1867, was that credit entered up in consequence of any effort made by yourself?

A. No, sir.

Q. Had you any knowledge of that credit being entered at that time?

A. I had it about that time, but that was a matter that I considered entirely outside of my legitimate duties; and I did not know the condition of those gentlemen, and I did not trouble myself about it.

Q. By whose efforts or by whose means was that credit entered?

A. By M'r May's, I have always understood.

366 Q. Were you made aware at the time of the mode in which he proposed to get that credit?

A. All that I know on the subject is that the treasurer told me that he was authorized by M'r May to overdraw, and that he (May) would make the overdraft good.

Q. Then you had no knowledge of the mode in which May got that credit from the bank.

A. Not in the least. I thought M'r May and M'r Graham rich men all the time. I had not the least idea of the arrangement they were making with the bank. That was the reason I went into partnership with them. I had no means of my own and they were reported to be rich men, and, of course, I made an arrangement with them, as I could have done with other parties.

Q. Was any proposition made to you by either one of your partners

that you should become personally responsible for those moneys drawn from the bank?

A. No, sir.

Q. Did you ever make yourself responsible in any way unless the law made you responsible?

A. No, sir.

367 Q. How did you consider the money obtained from the First National Bank; how did you treat it?

A. I considered that it was money that M'r May had furnished to the concern, or that he was bound to furnish to the concern.

Q. Have you any knowledge of being sent for on the morning of the day when that credit of one hundred and twenty-five thousand dollars was entered?

A. No, sir.

Q. Were you consulted about it on that morning?

A. No, sir.

Q. Have you any knowledge of going to the First National Bank on the occasion that that credit was entered or being sent for by the bank?

A. I was not sent for. I used to go there about once or twice a month, according to circumstances, but I have no recollection of being sent for. I have no recollection of going there at that time, and I certainly was not sent for.

Q. Was that a subject of conversation between you and M'r May and M'r Graham?

A. No, sir; these were matters that I left entirely with M'r

368 May and the treasurer; and I did not consider it my duty to interfere with them.

Q. At the date of the act of fusion in October, 1867, were you familiar with the then condition of this railroad?

A. Yes, sir.

Q. Was it complete or incomplete?

A. It was incomplete.

Q. What amount, if you can form an opinion, or if you know it of your own knowledge, was requisite to complete the road?

A. I cannot say the amount, but I will state that it was in a very incomplete condition. It would require a very large amount. It was not completed until long after the fusion. We were still at work at the horse cars.

Cross-examined by M'r Rouse:

Q. You say that the treasurer informed you that he was authorized to overdraw from the First National Bank for the use of the partnership?

A. Yes, sir.

Q. You did not dissent from his overdrawing on that occasion?

A. No, sir; I considered that I had nothing to do with it, ex-

369 cept to carry out the arrangement that I had made.

Q. You knew the facts that overdrafts were made?

A. Yes, sir; I was aware of that.

Q. The treasurer was under your supervision, was he not?

A. Under my general supervision to attend to the monetary department.

Q. He was under your supervision in your capacity as manager and superintendent of the road?

A. Yes, sir; he was appointed with the consent of my partners.

Q. You knew the fact of the treasurer overdrawing to the amount of two hundred and thirty-seven thousand dollars, did you not?

A. I do not know the amount. I knew that he had overdrawn.

Q. You knew the amount at the time, although you do not remember it now?

A. I cannot say that I knew it immediately at the time, because I seldom troubled myself with the financial department. I knew that it was overdrawn, but I cannot state the amount. I suppose the books will show what the amount of the overdraft was. I want you to
370 understand that I had nothing to do with the financial department. M'r May attended to it.

Q. When you learned of the discount of the note for forty thousand dollars, you did not go to May and protest against it, did you?

A. No, sir; but I thought it a very singular act.

Q. You did not express your disapproval of it?

A. No, sir; not to him.

Q. He held your power of attorney, did he not?

A. I stated that I thought that it was a singular proceeding on his part, and that I thought it did not come within the meaning of his power of attorney. I did not approve of the thing being done; but I did not say so to him.

Q. You did not communicate your dissent to him in any way?

A. No, sir; I so expressed myself to the treasurer. I do not know whether he informed him of it or not.

Q. Has there ever been any formal dissolution of the co-partnership existing between you and May and Graham by notarial or private act?

371 A. Not that I know of, except by the sale of the government.

Q. Not by any act between you?

A. No, sir; only by the act of the government, by the seizure and transfer.

Q. M'r Graham furnished a large proportion for carrying on the partnership, did he not?

A. I do not know; the books will show.

Q. Did he not pay money to you?

A. Never to me.

Q. Or to your treasurer with your knowledge?

A. That I cannot say. The treasurer will answer for himself.

Q. Were you not present when he paid money on property purchased through your negotiations?

A. No, sir; never. I never heard of their embarrassed condition until they had failed.

Q. Do you know what the credit at the opening of the account of Beauregard, lessee, with the First National Bank on the 16th April, 1866, amounting to twenty thousand dollars, was composed of?

A. No, sir; I do not.

Q. Do you know what the credit of May 4th, 1866, for twenty thousand dollars was composed of?

372 A. I have not the least idea.

Q. Have you any knowledge of any of the credits?

A. Not that I know of.

Q. The treasurer superintended the deposits?

A. Yes, sir.

Q. What was his name?

A. S. R. Procter. I did not attend to the treasury department. When I was carrying on the works for the United States, it was the same

system. That was the understanding and arrangement. I knew that we could make a very good thing of it, and thought that they had capital. I have been twenty years carrying on works of that kind. They furnished the money and I carried them on. I furnished a monthly statement of receipts and expenditures, so as to keep them inform'.

Q. Graham may have made payments on account of his capital, which were deposited in this account?

A. Yes, sir; he may have done so.

Q. If he did not make any such payments it would not be known to you as a fact except through the medium of the treasurer or his account?

A. Through my treasurer.

373 Q. Have you the checks which were drawn by the firm upon the First National Bank of New Orleans, in your possession or under your control?

A. I cannot say; they may be on file in the office.

Q. Will you examine the files and see if you can produce them?

A. Yes, sir; I will do so.

(M'r Miller promises to produce the checks called for at the same time that he shall place upon the witness stand M'r S. R. Proctor, the treasurer referred to.)

Q. Was not the forty thousand dollars which was obtained by the discount of that note in September, used for the purposes of the partnership?

A. In September I was not here; I was in Europe.

Q. Do you not know that to be the fact? Was not all the money which was drawn by the overdraught used in the business of the road?

A. Yes, sir; I will state that some of it was used in purchasing the hotel in Carrollton, to the taking of which I had objected before

374 I left for Europe. When I returned I found that the thing had been completed. Whether the forty thousand dollars went to that or not I do not know. All the money which was drawn from the bank was applied to the business of the partnership.

Q. You were not to have any interest in the property or profits until May's and Graham's expenditures were repaid with interest?

A. Yes, sir; with eight per cent. interest. Then we were to begin to divide the profits, one-third each.

Q. Did you put any funds in the road yourself?

A. No, sir; I only put in my labor and attention and time.

Q. What have you realized from it in addition to your salary of five thousand dollars a year?

A. Not one cent. If they had only stuck to their agreement, they would have to divide about one hundred thousand dollars this year. I would have paid them all the money that they advanced, and we would have at least seventy-five thousand dollars to divide among us.

Q. Who received compensation for the one-third of the partner-

375 ship property which was transferred, as belonging to you under the act of fusion, to the Carrollton Railroad Co.?

A. Under the act of fusion I was to come in for my third after certain advances made by the new purchasers, and May's and Graham's share were entirely satisfied. I was not to get that in cash, but I was to get it in stock. Practically I got nothing; there was nothing left to divide with me. Therefore I was put to all my trouble there for nothing.

G. T. BEAUREGARD.

Sworn to 4th April, 1871.

JOHN B. WELLER, *C. S. C.*

I do hereby certify that the foregoing depositions of Peter McBride and G. T. Beauregard were taken before me, reduced to writing, first in hieroglyphics by C. W. Colton, a stenographer, and that on the 15th April, 1871, the said Colton appeared before me and on solemn oath declared that they were in all respects true and correct translations from the original notes thus taken.

Given under my hand and official seal this 15th of April, 1871,
375½ at the City of New Orleans, State of Louisiana.

[SEAL.] JOHN B. WELLER,
U. S. Commissioner and Master in Chancery.

376 United States circuit court. In chancery.

CHA'S CASE, RECEIVER, &c., *vs.* G. T. BEAUREGARD & ALS. } No. 5931.

Testimony taken before Hon'l J. B. Weller U. S. Commissioner, April 6th, 1871.

Present:
For complainant, J. D. Rouse, esq.
For N. O. & C. R. R. Co. }
" Alex. Bonneval }
" Geo. Binder } Mess. Lea, Finney & Miller.
" Jos. Hernandez }
" G. T. Beauregard }

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" " Lewis Meig 53
" " Tho's P. May 66

Specially reported by C. W. Colton, stenographer.
Testimony filed April 17, 1871.

377 S. R. PROCTOR sworn and examined.

By Mr. Miller, on behalf of defendants:

I was cashier, treasurer, and inspector of the Carrolton Railroad from its inauguration, under the lease to Beauregard in April, 1866, up to the present time.

Q. State whether you can say anything as to the cash payments made upon property.

A. These are the cash payments on property purchased by the partnership of May, Graham & Beauregard, between April, 1866, and September, 1866.

(Referring to checks marked "L M," "M N," "N O," and "O P," which said checks were offered in evidence by M'r Miller.)

Q. Can you particularize the property on which these payments were made?

A. Only from this schedule, marked "Schedule No. 1" (referring to said schedule in printed book). One cash payment was made on property corner Napoleon and S't Charles streets, purchased from widow S. J. Peters; another cash payment on property on square bounded
378 by S't Charles, Apollo, Berlin, and Milan streets, purchased from S. A. Kohn; another cash payment on property purchased from W. C. Raymond, and another cash payment on property purchased from the New Orleans and Carrolton Railroad Company—the Carrolton Hotel

Q. Now, in a general way, can you state what the earnings of the road were during that period?

A. The earnings are all stated here.

Q. What was the amount of the earnings of the road during that period from September, 1866, to April, 1866?

A. ($65,263.95.) Sixty-five thousand two hundred and sixty-three dollars and ninety-five cents.

Q. What were the other resources of the road during that period?

A. The means contributed by M'r May and M'r Graham.

Q. What amount did they contribute?

A. I get that amount the same as I did the others—from this "Schedule No. 1." These are taken from the books.

Q. Have you no recollection on the subject?

A. I have a recollection that these things are right, but I have

379 no particular recollection of the items.

(M'r Rouse objected to the witness testifying to anything from the printed record.)

Q. Was not this railroad in operation and carrying passengers between April, 1866, and September, 1866?

A. Yes, sir; the steam-road was in operation then, and part of the horse-road, but they were just about changing from the one to the other.

Q. Did not this road make earnings during that period?

A. Yes, sir.

Q. Can you not give us some idea of the earnings by the month, or the earnings during that period, from April, 1866, to September, 1866?

A. I cannot without referring to the books.

Q. You have some general idea on the subject?

A. I would not like to put down figures without referring to the books.

Q. Did the road make five hundred dollars a month or a thousand dollars a month?

A. I could not tell you. You need not try to get it out of me that way.

380 Q. Was it your department to handle the money?

A. Yes, sir.

Q. Have you any recollection of any earnings being paid in during that period?

A. Yes, sir; they used to be paid in every day.

Q. But you cannot state from your recollection what they were?

A. No, sir; it is impossible.

Q. Will you be able to state by referring to any figures that should be presented to you?

A. If the books were given to me, I, no doubt, would be able to certify that these things are true. The receipts were handed in and counted every day, and regularly put down by the book-keepers. I would state that there was also a cash payment made on lease of hotel purchased from P. Williams by the partnership, on June 16th, 1866, and M'r May told us to give him credit for it.

Q. Between September, 1866, and April, 1867, have you any knowledge of any payment made by the partnership of May, Graham, and Beauregard upon property?

A. Yes, sir; there were payments made.

381 Q. Please state what those payments were.

A. I can state them from memoranda. I can refer to the books.

Q. You can refer to the books.

A. This check for twenty-eight hundred and eighty dollars was for

property purchased from M'r Kohn (producing check). The date of that payment was May 3rd, 1867, and it was made by check produced and marked "P Q." (Said check was offered in evidence by M'r Miller.)

There was also paid a note which is now produced and marked "Q R," for property purchased from W. C. Raymond, amounting to four thousand one hundred and sixty-six .66⅔ dollars. (Said note was also offered in evidence by M'r Miller.) There was also a cash payment made on a note for property purchased from the New Orleans and Carrollton Railroad Company, which was paid by check now produced and marked "R S." (Said check was also offered in evidence by M'r Miller.)

Q. Were there any other payments made on property purchased during that period?

382 A. Not that I recollect.

Q. Have you any knowledge of any other expenses incurred by this partnership during that period, from September, 1866, to May, 1867?

A. They were making expenses all the time.

Q. Large expenses?

A. Yes, sir; they were changing the road from steam to horse cars.

Q. What were the resources of the road during that time? Did the road make any earnings during that period?

A. Certainly, they made earnings.

Q. Considerable earnings?

A. They were less, as the travel on the road was interfered with by the reconstruction, but still the earnings were something all the time.

Q. As you were the treasurer and cashier of the company, you must have had some knowledge of the resources of the company during that period; what were they besides the earnings?

A. We overdrew on the bank.

Q. That was one item?

A. Yes, sir.

383 Q. Was there any other item?

A. Well, from time to time there would be amounts placed upon the bank book going to make up the overdrafts.

Q. Well, besides the overdrafts and the earnings, had you no other resources?

A. Not that I know of.

Q. Did you have sales of property, or anything of that kind?

A. Oh, yes; there might have been some sales. There were sales of some rolling stock and some old iron.

Q. From your knowledge of the facts, can you not state what the amount of those earnings were?

A. No, sir; I have no recollection of the amount. I cannot state what the amount was without referring to the books. The books were not even kept by me, but were kept by the clerk. I knew that they were right, however.

Q. What was the balance, if any, in the books of the partnership on the 11th of May, 1867?

A. It was something like four thousand dollars. I recollect that, and I will tell you why, because I have been looking into it lately.

384 Q. Then all the resources of the road had been consumed except that balance of four thousand dollars?

A. Yes, sir.

Q. Will you turn your attention to the period from May 11th, 1867, and subsequent to that period, and state whether you have any knowl-

edge of any payments made for the debts of that partnership since that period?

(Mr. Rouse objected on the ground of irrelevancy, as having nothing to do with the issues in this case.)

A. (Producing five notes, which were offered in evidence, and marked "S T," "T U," "U V," "V W," and "W X.") These were payments made for the debts of the partnership of May, Graham and Beauregard subsequent to the 11th of May, 1867.

Q. What were those payments for?

A. They were for mules, most of them. There may be some for other things there; I have not looked at them. I think they were for mules.

Q. Look at the documents themselves, and state what they were for.

385 (Shown said documents marked "S T," "T U," "U V," "V W," and "W X.")

A. The document marked "S T" does not say what it is for, nor does the document "T U," but they are in favor of Elliott, and we never got anything from him but mules or horses. All of these notes are in favor of Elliott, and were all given for mules or horses.

Q. What was the condition of the partnership on the 11th of May, 1867, in respect to debts. Did they owe any debts?

A. Certainly, they owed debts.

Q. These notes that you have just looked at were for some portions of the debts due at that time?

A. Yes, sir.

Q. Besides these notes that you have produced, did they owe any other debts on the 11th of May, 1867?

A. Yes, sir; they must have owed other debts. I cannot state the amount from my own knowledge.

Q. You signed all the checks upon the First National Bank, did you not?

A. Yes, sir; I signed all the checks.

Q. State how it was that the partnership came to overdraw upon the First National Bank.

386 A. (Producing paper.) Here is a letter of mine to M'r May, dated September 4th, 1866, or at least this is a copy taken by me at the time, in my own handwriting, when I wrote it. It is my information to M'r May, stating that we had certain amounts to pay, and that we had only a certain amount in bank, and asking him what we were to do.

Q. When that note was written, what was the condition of your account with the First National Bank?

A. We had a small balance on hand. That letter which I have produced states the amount; some three hundred odd dollars, if I recollect right.

Q. Had you ever overdrawn on your bank account before you wrote that note?

A. No, sir; not that I have any recollection of at all.

Q. Subsequent to the writing of that note, did you have any response from M'r May, or any intercourse with him in reference to the subject?

387 A. No, sir; excepting that he told me to draw; that it was all right, or would be made all right, and to keep on and draw what we required.

Q. Did he state who was to make it all right?

A. He stated that he would make it all right.

(The copy of the note referred to was offered in evidence by M'r Miller and marked "Y Z."

Q. Was it upon that letter or communication, and the verbal answer to it by M'r May, that you made the overdrafts on the bank?

A. Yes, sir.

Q. Did you have any other communication with any officer of the bank with reference to overdrawing?

A. No, sir.

Q. Did any other officer of the partnership or of the railroad have any communication with the bank in reference to these overdrafts?

A. Not that I know of.

Q. You had no other communication except with M'r May?

A. None except with M'r May.

Q. Was Beauregard here at the time that this overdrawing commenced?

A. No, sir.

388 Q. Did Beauregard take any part in reference to getting these overdrafts from the bank?

A. No, sir; not that I know of. He may have signed some checks at the time that we were overdrawing; but the first checks were signed by M'r May and myself during the overdraft.

Q. Did you ever make any communication to Beauregard in reference to these overdrafts; any special communication?

A. I may have informed him, and I no doubt did, that we were overdrawing. It must have been my duty, as a matter of course, to do so.

Q. By whom were these five notes in favor of D'r Elliott paid?

A. I can state by the books.

Q. I presumed that you knew who made the payments subsequent to May, 1867, by what body or by what person they were made, as you made the payments yourself.

A. The notes may have been paid by the giving of other notes, which other notes were paid.

Q. My question is as to who paid them?

389 A. Some of the notes were taken up by the parties, if I am not mistaken.

Q. What parties? Were any of them paid by the old partnership of May, Beauregard and Graham?

A. No, sir; they could not have been paid by them.

Cross-examined by M'r Rouse:

Q. As treasurer, you signed all the checks drawn by Beauregard, lessee, for the partnership, upon the First National Bank of New Orleans?

A. Yes, sir.

Q. You made the deposits, did you?

A. No, sir; I did not make them personally. They were made by one of the clerks in the office.

Q. They were made under your direction and with your knowledge?

A. Under my directions and with my knowledge?

Q. You knew the state of the account, then, at all times?

A. Yes, sir; I had the check-book; how could I help knowing it?

Q. You knew how much it was overdrawn?

A. Yes, sir.

390 Q. Did you communicate these facts to M'r Beauregard of the overdrafts?

A. He was not here at the time of the overdraft; that is, the first one.

Q. I am speaking of the time when any overdrafts existed.

A. Yes, sir; I told the general that we were overdrawing; but I wish you to understand that at the time of the first overdraft he was not here.

Q. The first overdraft occurred in September, 1866?

A. In September, 1866.

Q. And M'r Beauregard returned in October, 1866?

A. I do not recollect the date.

Q. How near can you come to the time?

A. My memory is very bad about dates, and I do not like to specify any.

Q. Was he here prior to the 1st of January, 1867?

A. He returned from Europe, I don't know exactly at what time. It was some time during the winter or fall; I do not recollect exactly.

Q. You think it was prior to the 1st of January?

391 A. I cannot say, sir.

Q. After he returned did you call his attention to the overdrafts?

A. Yes, sir.

Q. And after that, up to the 13th of May, 1867, did you frequently call his attention to those overdrafts?

A. I cannot say that; I did not bother my head about it. I certainly informed him, however, that we were overdrawing.

Q. Had you knowledge at the time of the credit of forty thousand dollars on the 15th of September in that account of the bank?

A. If you refer to accounts and dates, I will ask to have the books.

Q. Do you remember that there was a credit of forty thousand dollars in that account?

A. There was a credit of forty thousand dollars in that account; I recollect that.

Q. It was the proceeds of a note of the partnership?

A. The proceeds of a note. Will you let me show this bank-book (producing book)?

Q. Certainly.

A. I want to show you the first information that I had of the

392 note. It was not until after this book was sent to the bank to be balanced that I knew anything about it.

Q. Refer now, if you please, to that bank-book which you have produced, and state whether that is the deposit-book kept by you with the First National Bank.

A. That is the book kept by me.

Q. The entries in that book were made from time to time by the officers of the bank, were they not, as the deposits were made by you?

A. Yes, sir.

Q. Refer to the entry in that account of Beauregard, lessee, with the First National Bank, on the fifteenth day of September, and state what credits were given to Beauregard, lessee, on that date.

A. Two hundred and sixty-three dollars and seventy cents ($263.70) and forty thousand dollars ($40,000).

Q. What was the $263.70 credited for?

A. This, I imagine, was our receipts, or the receipts of the road.

Q. You mean that you deposited cash to that amount?

A. Probably that.

393 What is the other credit on that date? State the amount and what it was for.

(The copy of the note referred to was offered in evidence by M'r Miller and marked "Y Z."

Q. Was it upon that letter or communication, and the verbal answer to it by M'r May, that you made the overdrafts on the bank?

A. Yes, sir.

Q. Did you have any other communication with any officer of the bank with reference to overdrawing?

A. No, sir.

Q. Did any other officer of the partnership or of the railroad have any communication with the bank in reference to these overdrafts?

A. Not that I know of.

Q. You had no other communication except with M'r May?

A. None except with M'r May.

Q. Was Beauregard here at the time that this overdrawing commenced?

A. No, sir.

388 Q. Did Beauregard take any part in reference to getting these overdrafts from the bank?

A. No, sir; not that I know of. He may have signed some checks at the time that we were overdrawing; but the first checks were signed by M'r May and myself during the overdraft.

Q. Did you ever make any communication to Beauregard in reference to these overdrafts; any special communication?

A. I may have informed him, and I no doubt did, that we were overdrawing. It must have been my duty, as a matter of course, to do so.

Q. By whom were these five notes in favor of D'r Elliott paid?

A. I can state by the books.

Q. I presumed that you knew who made the payments subsequent to May, 1867, by what body or by what person they were made, as you made the payments yourself.

A. The notes may have been paid by the giving of other notes, which other notes were paid.

Q. My question is as to who paid them?

389 A. Some of the notes were taken up by the parties, if I am not mistaken.

Q. What parties? Were any of them paid by the old partnership of May, Beauregard and Graham?

A. No, sir; they could not have been paid by them.

Cross-examined by M'r Rouse:

Q. As treasurer, you signed all the checks drawn by Beauregard, lessee, for the partnership, upon the First National Bank of New Orleans?

A. Yes, sir.

Q. You made the deposits, did you?

A. No, sir; I did not make them personally. They were made by one of the clerks in the office.

Q. They were made under your direction and with your knowledge?

A. Under my directions and with my knowledge?

Q. You knew the state of the account, then, at all times?

A. Yes, sir; I had the check-book; how could I help knowing it?

Q. You knew how much it was overdrawn?

A. Yes, sir.

390 Q. Did you communicate these facts to M'r Beauregard of the overdrafts?

A. He was not here at the time of the overdraft; that is, the first one.

Q. I am speaking of the time when any overdrafts existed.

A. Yes, sir; I told the general that we were overdrawing; but I wish you to understand that at the time of the first overdraft he was not here.

Q. The first overdraft occurred in September, 1866?

A. In September, 1866.

Q. And M'r Beauregard returned in October, 1866?

A. I do not recollect the date.

Q. How near can you come to the time?

A. My memory is very bad about dates, and I do not like to specify any.

Q. Was he here prior to the 1st of January, 1867?

A. He returned from Europe, I don't know exactly at what time. It was some time during the winter or fall; I do not recollect exactly.

Q. You think it was prior to the 1st of January?

391 A. I cannot say, sir.

Q. After he returned did you call his attention to the overdrafts?

A. Yes, sir.

Q. And after that, up to the 13th of May, 1867, did you frequently call his attention to those overdrafts?

A. I cannot say that; I did not bother my head about it. I certainly informed him, however, that we were overdrawing.

Q. Had you knowledge at the time of the credit of forty thousand dollars on the 15th of September in that account of the bank?

A. If you refer to accounts and dates, I will ask to have the books.

Q. Do you remember that there was a credit of forty thousand dollars in that account?

A. There was a credit of forty thousand dollars in that account; I recollect that.

Q. It was the proceeds of a note of the partnership?

A. The proceeds of a note. Will you let me show this bank-book (producing book)?

Q. Certainly.

A. I want to show you the first information that I had of the
392 note. It was not until after this book was sent to the bank to be balanced that I knew anything about it.

Q. Refer now, if you please, to that bank-book which you have produced, and state whether that is the deposit-book kept by you with the First National Bank.

A. That is the book kept by me.

Q. The entries in that book were made from time to time by the officers of the bank, were they not, as the deposits were made by you?

A. Yes, sir.

Q. Refer to the entry in that account of Beauregard, lessee, with the First National Bank, on the fifteenth day of September, and state what credits were given to Beauregard, lessee, on that date.

A. Two hundred and sixty-three dollars and seventy cents ($263.70) and forty thousand dollars ($40,000).

Q. What was the $263.70 credited for?

A. This, I imagine, was our receipts, or the receipts of the road.

Q. You mean that you deposited cash to that amount?

A. Probably that.

393 What is the other credit on that date? State the amount and what it was for.

A. I did not find that out until afterwards. I understood that it was the proceeds of a note.

Q. What is the amount?

A. Forty thousand dollars.

Q. What was the amount of the credit entered in said account on the 16th of April, 1866?

A. Twenty thousand dollars.

Q. What was that?

A. That was money advanced either by M'r May or M'r Graham.

Q. As a part of the capital of the partnership?

A. Yes, sir, as part of the capital under the agreement.

Q. State what credits were entered in said account on the fourth day of May, 1866.

A. One of twenty thousand dollars and one of four hundred and thirty-eight dollars and fifty cents.

Q. What was the twenty thousand dollars credit composed of?

A. It was money given by either M'r May or M'r Graham, in accordance with their agreement.

Q. As a portion of capital?

A. As a portion of capital.

394 Q. What is the item of $438.50 composed of?

A. I cannot say exactly; but that must be our cash-deposit on that day.

Q. What credits are entered on that account on the 9th day of June, 1866?

A. There is one credit of three hundred and eighty-three dollars and sixty-five cents ($383.65).

Q. What was that for?

A. That was our receipts or daily deposit.

Q. What other credit is there on that date?

A. There is another one of twenty thousand dollars.

Q. What was that credit composed of?

A. That was for the same purpose as the credit on the first page, and furnished by the same parties.

Q. It was a payment on account of the capital agreed to be invested by May and Graham?

A. Yes, sir.

Q. Do you know which one paid in twenty thousand dollars at that date?

A. I cannot tell that. I know it was one of them.

395 Q. On the 10th of July, what credits were given on that account?

A. There is also entered the daily receipts, or daily deposits, of four hundred and forty-three dollars and eighty cents ($443\frac{80}{100}$), and another credit of twenty thousand dollars.

Q. What was the twenty thousand dollar item?

A. Capital invested or contributed by one of those two gentlemen, May and Graham; I do not know which.

Q. What are the credits entered on that account, on the nineteenth day of March, 1867?

A. There is one credit of one hundred and forty-two dollars.

Q. What was that?

A. I suspect those were our receipts.

Q. That was cash deposited?

A. Cash deposited.

Q. The other credit on that date was how much?

A. One hundred and twenty-five thousand dollars was placed upon my book.

Q. What was that for?

A. That was to cover the overdraft.

Q. That was a fictitious credit, was it not?

396 A. I do not know anything about that. My book was sent to the bank and they placed that on it.

Q. When does it appear to have been placed in your book; subsequent to what date?

A. I do not recollect about that now.

Q. Subsequent to what date is that credit entry of one hundred and twenty-five thousand dollars, following the regular entries of the bank?

A. Subsequent to April 4th.

Q. There are other credits in that account previous to the entry on the credit side, of March 19th, of one hundred and twenty-five thousand dollars?

A. There are other entries previous to that.

Q. And subsequent to the first entry of the 19th of March?

A. Yes, sir; there are entries between.

Q. Entries of what dates?

A. March 21st, March 22nd, March 23rd, March 25th, March 26th, March 27th, March 28th, March 29th, March 30th, April 1st, April 2nd, April 3rd, and April 4th.

Q. Then they place the credit entirely under the date of March

397 19th, of one hundred and twenty-five thousand dollars?

A. Yes, sir.

Q. Were the amounts paid by May and Graham, about which you have testified, paid to you as treasurer, and by you deposited in the First National Bank?

A. Either in that way, or put as you see, as credits on this book. That forty thousand dollars was not paid to me.

Q. I am speaking of the twenty-thousand-dollar credits?

A. I think that that was paid to me, or possibly the amount may have been put on the book when I sent it to the bank. I cannot recollect.

Q. Is there any means by which you can refresh your memory?

A. I know that once or twice they were paid to me. I don't think they were every time.

Q. Do you know who made the payments, when they were made to you on account of capital?

A. Mr. May made one.

Q. And Mr. Graham made one?

A. I am not certain of that fact.

Q. You say that on the 11th of May there were four thousand

398 dollars in the hands of the partnership?

A. Four thousand some odd hundred dollars—four thousand and some three or four hundred dollars.

Q. Where was that money? Was it deposited in bank?

A. Our bank account will show that if it was.

Q. If the bank account shows that on that date there was an overdraft of seventy-two thousand dollars, where would that money be?

A. It would have been in the safe in the office if it was not in the bank.

Q. Were you not in the habit of making daily deposits of the amount of money on hand?

A. Yes, sir.

Q. How did it come that at this particular time you would have four thousand dollars in your safe?

A. You will find that those deposits cease on the 25th of April.

Q. Why did you cease to make deposits in the First National Bank at that time? Did you have instructions from any one not to make any more deposits in that bank?

A. I do not recollect that I did.

399 Q. Why, then, were the deposits not made there at that time?

A. I do not recollect distinctly, but I think it was because the partnership was looked upon as broken up, or something of that sort. I do not exactly recollect. I no doubt ceased to make deposits in that bank by authority, but I do not recollect.

Q. It was contrary to your previous custom, was it not?

A. It was.

Q. It was your custom to deposit your daily receipts in the bank, was it not?

A. Yes, sir.

Q. The notes which you have testified about as being the notes of D'r Elliott, and which have been introduced in evidence upon your examination-in-chief, were given for property for the benefit of the partnership, were they not?

A. Yes, sir; they were given for mules.

Q. You say that when you acquainted M'r May of the necessity of having money in September to meet the liabilities of the road, he told you to draw, and that he would make it all right?

400 A. Yes, sir.

Q. Where was he when he told you this?

A. He was in the office.

Q. What office?

A. In the Carrollton Railroad office, on Barronne street, under where we are now. He was either there, or he sent to me to tell me that. I know that he told me that personally, and my impression is that he told me so in the Carrollton Railroad office.

Q. Did you have any conversation with him subsequently about the draughts that you were making on the bank in excess of your account?

A. I cannot say that I did, particularly.

Q. Did M'r Beauregard tell you to continue drawing, without regard to the state of the account?

A. O, I never had any instructions from him about that. I had instructions from M'r May to draw.

Q. Did you have any instructions from him except at this one time?

401 A. I do not recollect. No doubt it must have been under instructions continually, or else the checks would not have been paid.

Q. That is simply your opinion. You have no recollection of any other instructions from M'r May?

A. M'r May, I think, repeatedly told us that, but I am not certain of it.

Q. Can you tell how much capital was paid in by May and Graham, or by either of them?

A. I cannot tell anything about it, sir, without referring to the books.

Q. Can you tell by referring to the books?

A. I imagine so, sir.

Redirect by M'r Miller:

Q. Who had the general control of the pecuniary business of May, Graham and Beauregard? Which of the partners had charge of that department—May, Graham, or Beauregard?

A. General Beauregard had nothing to do with the furnishing of the capital. I suppose you all know that their agreement says so.

Q. In your communications about the pecuniary matters of the partnership, who did you communicate with principally?

402 A. I never had many communications with anybody about it, except, when there was no money, to let them know of it.

Q. Who did you make those communications to?

A. One was to M'r May in writing. I may have informed General Beauregard, as a matter of course, that such a state of things existed; but I did not look upon that as being his business.

Q. Your applications for money were made to which of the partners?

A. They were made to M'r May or M'r Graham.

Q. In reference to these payments of capital, have you any recollection of anything received in contributions of capital from M'r Graham personally?

A. I do not recollect it, it is so long since.

Q. Have you any recollection of having received anything personally from M'r May?

A. I think I did once get a twenty thousand dollar check from M'r May.

Q. You have been asked about this forty thousand dollars dis-

403 count of Beauregard's note entered up by the bank in September, 1866; Beauregard not being here at the time that that credit was entered, when was he apprised of it?

A. When he came back.

Q. Did you apprise him of it?

A. Yes, sir.

Q. Did you know yourself how that credit came to be entered up at the time it was entered up?

A. I knew nothing about it, sir.

Q. Did Beauregard manifest any assent or dissent when that communication was made to him on his return?

A. He was not pleased at it. I supposed, naturally, from what he said himself, he was not pleased at it.

Q. Now, in reference to these credits for capital which figure on this bank-book, which you have been interrogated about, were not those credits usually entered on your book when you sent it to the bank?

A. Sometimes they were. I think I personally got one of those amounts from M'r May, himself; but sometimes the bank-book was sent and the credit was placed upon it.

Q. You recollect of that one credit having been paid to you personally?

A. I think I do.

404 Q. The other credits were entered at the bank?

A. That is my impression.

Q. I suppose that this bank account exhibits the figure of the earnings and the resources of the road during the period that it embraces?

A. I know of no other resources except what are included in this book.

Cross-examination resumed by M'r Rouse:

Q. Were not all the disbursements of the partnership, from the time of its organization to the failure of the First National Bank, passed through that bank or drawn out of it by check?

A. I think they were all. I think so, but I am not certain of it.

S. RICH'D PROCTER.

Sworn to this 6th April, 1871.

JOHN B. WELLER,
U. S. Com.

405 LOUIS MEIG sworn and examined on behalf of the defense.

To M'r Miller:

I have been acting cashier and exchange and discount clerk of the First National Bank from its organization to its close. Thomas P. May kept an account with the First National Bank during that period.

Q. How did that account arise? From deposits or from what?

A. It arose from deposits.

Q. Please look at the account of Thomas P. May upon the books of the First National Bank.

A. This is a copy of the account of Thomas P. May with that bank (referring to paper).

(M'r Miller offered a copy of the said account in evidence for the purpose of showing the indebtedness of the bank to Tho's P. May. M'r Rouse objected to its introduction on the ground that it is immaterial for the purpose of this suit whether or not M'r May was indebted, and because the individual indebtedness of May to the bank cannot legally be compensated, as it is sought to be, by the defend-
406 ants' supplementary answer. It was agreed that the copy of the account of Thomas P. May with the First National Bank, marked "A M" & annexed, shall serve as a substitute for the original account in the books.)

Q. State whether there was any indebtedness by that bank to Thomas P. May on the 14th day of May, 1867, prior to the debit of eighty thousand dollars, which is the last debit in the account.

A. Three hundred and fifteen thousand seven hundred and seventy-nine dollars and sixty-four cents ($315,779.64.)

Q. Do you know what this debit of eighty thousand dollars on the 15th of May was debited upon?

A. I could not tell you.

Q. Do you know whether that three hundred and fifteen thousand odd dollars or any portion of it has been paid?

A. I could not tell you.

Cross-examined by M'r Rouse:

Q. The account of Thomas P. May shows a debit of eighty thousand dollars, does it not?

407 A. It does.

Q. That would leave the balance how much?

A. That would leave two hundred and thirty-five thousand seven hundred and seventy-nine dollars and sixty-four cents ($235,779.64).

Q. Do you know the fact that a check was presented at the bank for $315,779.64, drawn by Tho's P. May?

A. I do not recollect that.

Q. Do you not remember that such a check was certified for the entire balance shown to be due by the books to Thomas P. May?

A. It did not come to my department. I could not tell you whether that was the case or not.

Q. I was speaking of the time when the bank was taken possession of by M'r Knox and a check was presented for M'r May's balance; have you any recollection of that?

A. No, sir; I have not.

Q. Was not M'r Thomas P. May indebted largely to the bank upon paper to which his name appeared either as maker or acceptor or drawer or endorser, on the thirteenth day of May, 1867?

408 (M'r Miller objected on the ground that the papers from which the said indebtedness appeared must be produced.)

A. Yes, sir; he was largely indebted to the bank as endorser and drawer.

Q. Was he not the acceptor of a bill of exchange drawn by A. C. Graham upon him for one hundred thousand dollars, which was held by the bank, on the thirteenth day of May, 1867?

A. Yes, sir.

Q. Do you know what was done with that bill of exchange?

A. I gave it up to M'r Case, as receiver. It was not then due when the bank failed.

Q. Examine the note now shown to you and state who is the endorser upon it.

A. Thomas P. May.

Q. Are you acquainted with his signature, and have you seen him write frequently?

A. Yes, sir; I know that it was written by himself.

Q. The body of the note is in his handwriting and it is endorsed by him?

A. Yes, sir.

Q. What is the amount of the note?

409 A. Fifty thousand dollars.

Q. Who is the maker of that note?

A. M. T. Steel.

(A copy of said note was hereto annexed, the original to be offered upon the trial.)

Q. Was that note discounted by the bank?

A. Yes, sir.

Q. Had it matured at the time of the failure of the bank?

A. No, sir.

Q. For whom was that note discounted?

A. For account of Steel. I do not recollect exactly, but I can prove it by the discount book. (The witness was here shown the discount book and referred to it.) I cannot tell even by the book.

Q. Who endorsed this note?

(Shown note for five thousand dollars by E. A. Deslonde to the order of Thomas P. May, a copy whereof is annexed hereto, the original to be offered on the trial.)

A. M'r May.

Q. Was it discounted by the First National Bank of New Orleans?

410 A. Yes, sir.

Q. And held by that bank?

A. I think it was held by them.

Q. Who endorsed this note?

(Shown a note for two thousand dollars of E. A. Deslonde; a copy whereof is annexed hereto, the original to be offered on the trial.)

A. M'r May, and it was discounted by the First National Bank of New Orleans.

Q. When did it mature?

A. On the 15th of June, 1867.

Q. Who is the endorser upon this note?

(Shown note by D. B. Forbes, for twenty thousand two hundred and eighty-four dollars, payable to the order of Thomas P. May, a copy of which is hereto annexed, the original to be offered in evidence upon the trial.)

A. M'r Thomas P. May, is the endorser.

Q. When did that note mature?

A. On the 20th of May, 1867.

Q. Was that note discounted by the First National Bank of New Orleans?

A. Yes, sir.

(M'r Miller objected to the notes offered in evidence, or to be
411 offered in evidence by counsel for plaintiff, purporting to be endorsed by Thomas P. May, upon the ground that a debt due by the bank to a depositor cannot be compensated by the endorsements of the depositor, especially before the obligations on which the endorsements exist are mature; dthat the notes were res inter alias.)

Redirect by M'r Miller:

M'r May got no portion of these discounts, did he? That is to say, they were not discounted by him?

A. I cannot answer the question; I could not tell you; it is too long ago; I cannot recollect.

Q. All these notes on which M'r May's endorsements appear matured after the 11th of May, 1867?

A. Yes, sir; after the close of the bank.

LOUIS MEIG.

Sworn to on the 6th April, 1871.

JOHN B. WELLER,
U. S. Com.

412 THOMAS P. MAY sworn and examined on behalf of the defense.

(M'r Rouse reserved an objection to the testimony of this witness, on the ground that he cannot give evidence in favor of his co-defendants.)

By M'r Miller:

Q. You were a depositor in the First National Bank during its existence?

A. Yes, sir.

Q. What indebtedness, if any, was due by the bank to you, at the close of the account of which this document marked A. M. is a copy?

A. I cannot say what it was at the close of that account, because I never saw that account. The bank was indebted to me for deposits in the sum of $315,779.64 on the 14th of May, 1867.

Q. Has any portion of that indebtedness ever been paid to you?

A. No, sir.

Q. This eighty thousand dollars which is debited in this account on May 15th, 1867, was it ever received by you?

A. No, sir.

Q. Have you any knowledge of that debit?

A. No, sir,

413 Q. You do not know how it came to be there?

A. No, sir.

Q. M'r A. C. Graham and yourself were associated together in this partnership of the lease of the Carrollton Railroad?

A. Yes, sir.

Q. Please state if you have any knowledge of any contributions of capital made by M'r Graham to that partnership.

A. No, sir; they were all made by me. If he made any, they were made for me by him.

(M'r Rouse objected to any testimony in derogation of the act.)

WITNESS. Of course M'r Graham appeared to be a partner on the act by the private understanding which existed.

(M'r Rouse objected to any evidence of any parole variation from the written contract of copartnership.)

Q. M'r Graham did make some contribution of capital in his own name, did he not?

A. I am not certain whether he did or not.

414 Q. If he made such contributions of capital, whose means were they that he contributed?

A. They were mine.

Q. Did M'r Graham ever take any part in the management of this partnership?

A. No, sir; not that I remember. I am not certain but that the months that I was about he had any power of attorney. In that capacity he took a part in it, if at all.

Q. By whom was that partnership really conducted?

A. By General Beauregard, the business part of it was conducted, and by myself, the balance. I furnished the capital, and it was conducted by him in all its details.

Q. Has there ever been any settlement of accounts between M'r Graham and yourself?

A. No, sir.

Q. On the fourteenth day of May, 1867, if M'r Graham had been here as a real partner, and the concern had been wound up, how would the accounts have stood between yourself and M'r Graham?

A. Well, I scarcely understand it.

415 Q. If he had been here as a real partner, and if the accounts had been settled up, would he have owed you?

A. That is my impression.

Q. You had made large disbursements on account of the partnership yourself, had you not?

A. Yes, sir.

Q. If you had made large disbursements, and he had made no contributions whatever, and if the affairs of the partnership had been settled up on the 14th of May, 1867, can you state positively whether he would have owed you or not?

A. I am not able to say positively whether he would have owed me or not on the face of the record.

Q. I am speaking of the actual facts.

A. On the actual facts, he did owe me.

Q. Had M'r Graham paid any debts of the partnership?

A. Not to my knowledge.

Q. On the 14th of May, 1867, when you made an assignment of your interest, what was the condition of the partnership in reference to debts? Was it indebted at that time?

A. My impression was that it must have been indebted at that time.

416 Q. Do you recollect about what was the amount of the debts?

A. No, sir.

Q. Was it large or small?

to the credit of Beauregard, lessee, in September, 1866, for forty thou-
dollars?

422 A. No, sir. I do not remember any particular note.

Redirect by M'r Miller:

Q. Did M'r Graham ever claim to have an interest in this partnership during its existence?

A. To me he never did; in fact, I never knew that he had claimed it until you informed me of it.

Cross-examination resumed by M'r Rouse:

Q. M'r Graham was in New York from July, 1866, until after the failure of the bank, was he not?

A. I do not remember the exact time that he went on, but he was there at the time of the failure of the bank.

Q. Do you not remember that he went in the summer of 1866?

A. I think it was in the summer or fall. I cannot remember the exact period.

Q. Under your articles of copartnership it was not necessary that he should make a special claim to you that he was a partner, was it? Did you make a claim to him that you were a partner?

423 A. I thought that M'r Miller's reference was simply——

Q. (Interrupting.) Did you ever make a claim to M'r Graham that he was not a partner?

A. No, sir.

T. P. MAY.

Sworn to the 6th April, 1871.

JOHN B. WELLER,
U. S. Com.

M'r Miller offered in evidence the power of attorney from Graham to May, marked "Exhibit E"; also schedules marked "No. 1," "No. 2," and "No. 3," annexed to the answer.

M'r Rouse objected to the introduction of said schedules, on the ground that they were not competent testimony of the facts sought to be proved by them.

424 I do hereby certify that the foregoing depositions of S. R. Proctor, Louis Meig, and T. P. May were taken before me at the time and place therein named, and were reduced to writing by C. W. Colton, a stenographer, and that the said Colton afterwards, to wit, on the 15th April, 1871, appeared before me and on solemn oath declared that they were in all respects correct translations from the original notes thus taken.

Given under my hand and official seal at New Orleans this 15th April, 1871.

JOHN B. WELLER,
U. S. Com. & Master in Chancery.

425 United States circuit court. In equity.

CHA'S CASE, RECEIVER, ET AL.,
vs.
G. T. BEAUREGARD ET ALS. } No. 5931.

Testimony taken before hon'l. J. B. Weller, U. S. Commissioner, New Orleans, April 10th, 1871.

Present: J. D. Rouse, esqr., for complainant', Ja's Hernandez, Geo. Binder; H. C. Miller, esq., for Alex. Bonneval, G. T. Beauregard, Carrollton R. R. Co.; W. W. King, esqr., for 4th Nat'l B'k of N. Y.; J. W. Gurley, esqr., for the United States.

Page.
Testimony of G. T. Beauregard, recalled 2
" " Joseph Hernandez .....
Alexander Bonneval .....
George Binder .....
Peter McBride .....

Specially reported by C. W. Colton, stenographer.
Testimony filed April 17th, 1871.

426 G. T. BEAUREGARD recalled on behalf of the defense.

By M'r Miller:

Q. On the 18th of July, 1869, did you own any shares in the Carrollton Railroad Company? If so, how many shares?

A. (After referring to books of the Carrollton Railroad Company.) I owned twenty shares at that time.

Q. What had become of those shares of stock which you acquired under the act of fusion?

A. They must have been transferred back to the company. I was never put in actual possession of the shares. A certain proportion of them were to be mine in a certain event.

(M'r Rouse objected to any parole evidence tending to vary the contract between the witness and the New Orleans and Carrol'ton Railroad Company and others, known as the act of fusion, and annexed to complainant's bill, marked "Exhibit L.")

Q. What had become of the proportion of stock which you had acquired under the act of fusion?

A. It had been transferred back to the company.

427 Q. Do you mean that your shares were transferred back to the company, or to any other parties? Who do you mean by the company?

A. They were transferred back to my associates. The stock had been placed to my credit for certain purposes.

Q. You say the stock had been transferred back to your associates? Please name them.

A. M'r Alexander Bonneval, M'r G. W. Binder, and M'r Joseph Hernandez.

By M'r Rouse:

Q. Was that transfer in writing?

A. It was transferred on the books of the company.

(M'r Rouse objected to any parole testimony of the transfer.)

By M'r Miller:

Q. The books will show that transfer that you speak of, will they not?

A. I suppose so.

Q. Had you ever any actual interest in those shares of stock which were acquired by the purchase's, Hernandez, Binder, Bonneval, and yourself, under the act of fusion?

428 (M'r Rouse objected to the question on the ground that it was an attempt to vary the written contract.)

A. None at all.

Q. Please state what the agreement was between Hernandez, Binder, Bonneval, and yourself in reference to those shares of stock which you acquired under the act of fusion?

(M'r Rouse objected to the question on the same ground as that stated in his objection to the previous question.)

A. They were placed in my name with the understanding that if after the *the* settlement of the fusion there should be a balance to my credit I should receive that balance, not otherwise.

Q. After the settlement of the fusion. What do you mean by that?

A. After the settlement of the agreement between our association and the old company.

Q. If there should be any balance, then what?

A. I was to receive my proportion.

Q. But there was no balance?

A. There was no balance.

Q. So that you got nothing from them?

429 A. So that I got nothing from them?

Q. All these shares of stock which you had acquired under the act of fusion had been transferred to Hernandez, Binder, and Bonneval before this suit was brought?

A. Yes, sir.

Cross-examined by M'r Rouse:

Q. Was that agreement which you speak of between yourself and Binder, Bonneval, and Hernandez in writing?

A. I do not now recollect.

Q. When was the agreement made that you were not to receive any stock until certain conditions were fulfilled?

A. At the time of the purchase from the government.

Q. In August, 1867?

A. Whatever the date of the purchase is; I do not recollect the date exactly.

Q. It was at the time the contract was made?

A. It was at the time that the sale was made from the government by M'r Bell. I do not recollect the date.

Q. Can you produce the stock-transfer book of the New Orleans
430 and Carrollton Railroad Company to show when these transfers of your stock were made by you?

A. (Producing said book.) The book will speak for itself. These are the entries in this book by which I transferred my stock to those gentlemen. (Referring to transfers Nos. 121, 122, 123, 299, 300, and 301, which said entries were offered in evidence by M'r Miller, copies whereof are hereto annexed.

By M'r Miller:

Q. Did you receive any consideration for this transfer of stock.

A. None at all, unfortunately.

(It was agreed that the entries referred to by the witness shall be copied and the said copies annexed hereto, the right being reserved to produce the originals.)

By M'r Rouse:

Q. Is that book, within your knowledge, the original stock-transfer book of that company?

A. Yes, sir; and it shows the transactions that I refer to.

G. T. BEAUREGARD.

Sworn to this 10th April, 1871.

JOHN B. WELLER, *U. S. C.*

431 JOSEPH HERNANDEZ sworn and examined.

By M'r Miller, on behalf of the defense:

(M'r Rouse reserved the same objection to the testimony of this witness that he had reserved to that of G. T. Beauregard, i. e., he could not give testimony for his co-defendants.)

Q. What stock of the Carrollton Railroad Company, if any, did you own on the tenth day of July, 1869?

A. Well, sir, I don't know; I don't think I owned much; I had sold out pretty much all I possessed.

Q. Can you state the number of shares that you owned at that date?

A. I could not tell exactly; it is too vague in my memory. I don't think I owned but just what was necessary to be a director—about twenty-five shares or something in that neighborhood, so far as I remember. I know that I have owned that number of shares about two years, no more.

Q. You are pretty certain that the number did not exceed twenty-five?

A. I don't think it exceeded twenty-five.

432 Q. Can you refer to any book to make the matter certain?

A. By referring to the stock-book you will find it out.

Q. Just refer to that book, and state what it was.

A. (After referring to said book.) The book shows that I owned twenty shares at that time.

(M'r Rouse objected to any testimony as to the book shown to the witness, unless the entries therein are in the handwriting of the witness.)

Q. Are you able to state that fact of your own knowledge after looking at the book?

A. Of course I am.

Q. What had become of those shares of stock which you had acquired under the act of fusion?

A. They went into the fusion.

Q. What had you done with them; you had acquired a certain part of them; what had you done with that part?

A. I sold them.

Q. Prior to the 20th of July, 1869?

A. Yes, sir. I sold them and a good many others besides, because I had been buying and selling.

433 Q. You had been paid for those shares before that date?

A. Yes, sir.

Q. And the sales made by you are shown by the transfer-book?

A. Yes, sir. You can see that I have made a large amount of transfers.

Q. Did you own any shares of stock prior to the act of fusion?
A. Yes, sir.
Q. About how many?
A. As far as I can remember it was about two or three hundred shares. I have owned as much as seven or eight hundred shares.
Q. Are you pretty certain that you owned two or three hundred shares before the fusion?
A. Yes, sir, so far as I recollect; it is so long ago.

Cross-examined by M'r Rouse:

Q. Can you state from your own recollection when you sold this stock which was transferred to you under the act of fusion?
A. Well, I did not sell it immediately afterwards, but I think it was within two or three months after the fusion that I sold it. I re-
434 member distinctly that I had a payment to make for those notes, and I sold the stock—say three or four hundred shares—to make the payment on that paper.

J. HERNANDEZ.

Sworn to this 10th April, 1871.

JOHN B. WELLER, *U. S. C.*

ALEXANDER BONNEVAL sworn and examined on behalf of the defense.

By M'r Miller:

(M'r Rouse reserved the same objection to the testimony of this witness that he had reserved to that of G. T. Beauregard and Joseph Hernandez.)

Q. How many shares of stock of the New Orleans and Carrollton Railroad Company did you own on the 10th of July, 1869?
A. Well, sir, I did not own any.
Q. What had become of the stock which you had acquired under the act of fusion?
A. I had sold it, sir.
Q. And had been paid for it?
A. Yes, sir.
Q. You had been paid for it prior to the tenth day of July, 1869?
A. Yes, sir.

435 Cross-examined by M'r Rouse:

Q. How long prior to the tenth of July, 1869, had you sold your shares in the Carrollton R. R. Co.?
A. I could not state. I had in the mean time bought and sold as a broker, and, as I had a large payment to make to the government, I had disposed of my stock so as to help that payment. When I say that I owned none in my own name I mean that I owned none personally. In the latter part of the time we had the firm of A. Bonneval & Co., which owned some few shares, but in my own personal name I did not own any.
Q. How many shares did your firm own?
A. I do not recollect.
Q. Did they own about twenty or twenty-five shares?
A. About that much.
Q. Please look at the book of the company and see if you can state how many they were.
A. (After referring to the book.) The firm of A. Bonneval & Co. o wned twenty shares on the tenth of July, 1869.

Q. Did you own any shares of stock prior to the act of fusion?
436 A. I think I did, but I could not recollect just now, not having my books before me. I think I owned some fifty or eighty shares then, maybe a hundred shares.
Q. That is your impression now?
A. Yes, sir; that is my impression now.

ALEX. BONNEVAL.

Sworn to this 10th April, 1871.

JOHN B. WELLER,
U. S. Com.

GEORGE BINDER sworn & examined on behalf of the defense.

By M'r Miller:

Q. On the tenth of July, 1869, how many shares of stock of the New Orleans and Carrollton Railroad Company did you own?
A. Individually I held none.
Q. Had you any interest in any owned by your firm?
A. Yes, sir.
Q. How many did your firm own on that date?
A. (After referring to book.) I see by the book that we owned twenty-two shares.
Q. What had become of the shares of stock that you had ac-
437 quired under the act of fusion?
A. I transferred them to my firm and the firm sold them.
Q. Had all the shares acquired by you under the act of fusion been sold and paid for prior to the 10th of July, 1869?
A. Yes, sir.

Cross-examined by M'r Rouse:

Q. How long before the tenth of July, 1869, did you sell your shares?
A. They were sold slowly—in some five, or six, or seven months, or a year. The transfer-book and the ledger will show that all were sold all the time. That was our business.

GEO. BINDER.

Sworn to this 10th April, 1871.

JOHN B. WELLER, *U. S. C.*

PETER MCBRIDE recalled on behalf of the defense.

By M'r Miller:

Q. You were the secretary of the Carrollton Railroad Company in 1867, 1868, 1869, and up to the present time?
A. I assumed the secretaryship in December, 1867. M'r Evans was there previously.
438 Q. You were in their employ during that time?
A. Yes, sir; as bookkeeper.
Q. Will you produce the transfer-book of that company?
(The witness produced the book called for.)
Q. State what period it embraces.
A. Well, it dates back previous to the fusion; it goes down to January 13th, 1869, and commences at August 23rd, 1867.
Q. Does this transfer-book show all the transfers made by Alexander Bonneval, Geo. Binder, Joseph Hernandez, and G. T. Beauregard, of the stock acquired by them under the act of fusion?
A. Yes, sir.

(M'r Miller offered said transfer-book in evidence to show the transfers made by Binder, Bonneval, Hernandez, and Beauregard of the stock acquired by them under the act of fusion; and it was agreed that the requisite extracts should be copied therefrom in order to avoid placing the whole book in the record.)

439 Cross-examined by M'r Rouse:

Q. Was this book kept and these transfers of stock made in it at the several dates affixed to them?

A. Yes, sir.

Q. Was there any other transfer-book kept during the same period of time by said company?

A. No, sir.

P. McBRIDE.

Sworn to this 10th April, 1871.

JOHN B. WELLER, *U. S. C.*

440 I do hereby certify that the foregoing depositions of G. T. Beauregard, Joseph Hernandez, Alexander Bonneval, George Binder, and Peter McBride, were taken before me at the time and place therein named, and were reduced to writing by C. W. Colton, a stenographer; and that said Colton, afterwards, to wit, on the 15th April, 1871, appeared before me and on solemn oath declared that they were in all respects correct translations from the original notes thus taken.

Given under my hand and official seal at New Orleans this 15th April, 1871.

[SEAL.]

JOHN B. WELLER,
U. S. Com. & Master in Chancery.

441 *Sixty documents from* 1 *to* 60 *inclusive.—Filed with testimony, April* 17*th*, 1871.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

DOCUMENT No. 1.

G. W. Binder to Le Sassier & Binder. 167 shares.

No. 23.] NEW ORLEANS, 25 *November*, 1867.

For value received I hereby transfer unto Le Sassier & Binder all my right, title, and interest in one hundred and sixty-seven shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH'D J. EVANS.

DOCUMENT No. 2.

G. W. Binder to Le Sassier & Binder. 435 shares.

No. 153.] NEW ORLEANS, *March* 2*d*, 1868.

For value received I hereby transfer unto Le Sassier & Binder all my

right, title, and interest in 435 shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
P. McBRIDE.

442 DOCUMENT No. 3.

Alexander Bonneval to D'r W. N. Mercer. 100 shares.

No. 30.] NEW ORLEANS, *Dec'r 3d*, 1867.

For value received I hereby transfer unto D'r W'm Newton Mercer all my right, title, and interest in one hundred shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

(Signed) ALEXANDER BONNEVAL.

Witness:
P. McBRIDE.

DOCUMENT No. 4.

G. W. Binder to F. A. Ducros. 167 shares.

No. 22.] NEW ORLEANS, *25th Nov'r*, 1867.

For value received I hereby transfer unto F. A. Ducros all my right, title, and interest in one hundred and sixty-seven shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH'D J. EVANS.

443 DOCUMENT No. 5.

J. Hernandez to Geo. Jonas. 20 shares.

No. 48.] NEW ORLEANS, *Dec'r 28th*, 1867.

For value received I hereby transfer unto Geo. Jonas esq., all my right, title, and interest in twenty shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
PETER McBRIDE.

DOCUMENT No. 6.

J. Hernandez to W. F. Chapman. 30 shares.

No. 49.] NEW ORLEANS, *Dec'r 31st*, 1867.

For value received I hereby transfer unto W. F. Chapman, esq., all my right, title, and interest in thirty shares of the capital stock of the

New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
PETER MCBRIDE.

444 DOCUMENT No. 7.

J. Hernandez to George Palfrey. 20 shares.

No. 56.] NEW ORLEANS, *Jan'ry 9th*, 1868.

For value received I hereby transfer unto George Palfrey all my right, title, and interest in twenty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 8.

J. Hernandez to Henry W. Palfrey. 144 shares.

No. 57.] NEW ORLEANS *Jan'ry 10th*, 1868.

For value received I hereby transfer unto Henry W. Palfrey esq., all my rights, title, and interest in one hundred forty-four shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

445 DOCUMENT No. 9.

Jos. Hernandez to L. E. Lemarie. 120 shares.

No. 79.] NEW ORLEANS, *January 24th*, 1868.

For value received I hereby transfer unto L. E. Lemarie, esq., all my right, title, and interest in one hundred and twenty shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 10.

Alexander Bonneval to A. J. Avégno. 79 shares.

No. 62.] NEW ORLEANS, *Jan'ry 16th*, 1868.

For value received I hereby transfer unto A. J. Avégno all my right, title, and interest in seventy-nine shares of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

446 DOCUMENT No. 11.

Alexander Bonneval to A. F. Avégno. 28 shares.

No. 63.] NEW ORLEANS, *Jan'ry 16th*, 1868.

For value received I hereby transfer unto A. F. Avégno all my right, title, and interest in twenty-eight shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. McBRIDE.

DOCUMENT No. 12.

Jos. Hernandez to J. W. Burbridge & Co. 50 shares.

No. 80.] NEW ORLEANS, *Jan'ry 24th*, 1868.

For value received I hereby transfer unto J. W. Burbridge & Co. all my right, title, and interest in fifty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. McBRIDE.

447 DOCUMENT No. 13.

Jos. Hernandez to E. Martin & Co. 111 shares.

No. 21.] NEW ORLEANS, *25th November*, 1867.

For value received, I hereby transfer unto E. Martin & Co. all my right, title, and interest in one hundred and eleven shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

P. p'r JOS. HERNANDEZ.
G. W. BINDER.

Witness:
RICH'D J. EVANS.

DOCUMENT No. 14.

G. W. Binder to Lesassier & Binder. 250 shares.

No. 4.] NEW ORLEANS, *Nov. 7th*, 1867.

For value received, I hereby transfer unto Lesassier & Binder all my right, title, and interest in two hundred & fifty shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH'D J. EVANS.

448 DOCUMENT No. 15.

G. W. Binder to Felix A . 250 shares.

No. 5.] NEW ORLEANS, *Nov'r 7th*, 1867.

For value received, I hereby transfer unto Felix A , all my right,

title, and interest in two hundred & fifty shares of the capital stock of New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. W. BINDER.

Witness:
RICH'D J. EVANS.

DOCUMENT NO. 16.

J. Hernandez to J. R. Proctor. 64 shares.

No. 9.] NEW ORLEANS, *Nov'r 11th*, 1867.

For value received, I hereby transfer my right, title, and interest in sixty-four shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ,
P. pro. S. RICH'D PROCTOR.

Witness:
RICH'D J. EVANS.

I hereby authorize S. R. Proctor, esqr., to transfer to P. N. Avegno sixty-four shares of the Carrollton Railroad Company (one hundred dollars paid), now standing on the books of the company in my name.
449 64 shares.

J. HERNANDEZ.

DOCUMENT NO. 17.

J. Hernandez to E. Martin & Co. 166 shares.

No. 10.] NEW ORLEANS, *Nov. 11th*, 1867.

For value received, I hereby transfer unto E. Martin & Co. all my right, title, and interest in 166 shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.
Pr. pro. S. RICH'D PROCTOR.

Witness:
RICH'D J. EVANS.

I hereby authorize S. R. Proctor, esqr., to transfer to E. Martin & Co. one hundred & sixty-six shares of the Carrollton Railroad Company (one hundred dollars paid), now standing on the books of the company in my name.

J. HERNANDEZ.

(The words hundred in the second line added)
166 shares.

J. HERNANDEZ.

450 DOCUMENT NO. 18.

Alexander Bonneval to . 100 shares.

No. 15.] NEW ORLEANS, *Nov'r 15th*, 1867.

For value received, I hereby transfer all my right, title, and interest

in one hundred shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
RICH'D J. EVANS.

DOCUMENT No. 19.

G. T. Beauregard to Jos. Hernandez. 379 shares.

No. 122.] NEW ORLEANS, *Feb'ry 21st*, 1868.

For value received, I hereby transfer all my right, title & interest unto Jos. Hernandez, in three hundred & seventy-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

451 DOCUMENT No. 20.

J. Hernandez to T. F. Gwathney. 30 shares.

No. 108.] NEW ORLEANS, *Febr'y 12th*, 1868.

For value received, I hereby transfer unto T. F. Gwathney all my right, title, and interest in thirty shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 21.

Alex. Bonneval to J. C. Dennis. 25 shares.

No. 130.] NEW ORLEANS, *Febr'y 26th*, 1868.

For value received, I hereby transfer unto J. C. Dennis all my right, title, and interest in twenty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

452 DOCUMENT 22.

Jos. Hernandez to Le Sassier & Binder. 39 shares.

No. 132.] NEW ORLEANS, *Febr'y 26th*, 1868.

For value received, I hereby transfer unto Le Sassier & Binder all my right, title, and interest in thirty-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 23.

Jos. Hernandez to P. A. Ducros. 25 shares.

No. 143.] NEW ORLEANS, *February 28th*, 1868.

For value received, I hereby transfer unto P. A. Ducros, esq., all my right, title, and interest in twenty-five shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

453 DOCUMENT No. 24.

Alexander Bonneval to Bonneval & Dolhonde. 288 shares.

No. 133.] NEW ORLEANS, 26*th Febr'y*, 1868.

For value received, I hereby transfer unto Mess'rs Bonneval & Dolhonde all my right, title, and interest in two hundred and eighty-eight shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALX. BONNEVAL.

Witness:
P. MCBRIDE.

DOCUMENT No. 25.

Alex. Bonneval to L. W. Baquie. 12 shares.

No. 116.] NEW ORLEANS, *Febr'y* 19*th*, 1868.

For value received, I hereby transfer unto M'r L. W. Baquie all my right, title, and interest in twelve shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

454 DOCUMENT No. 26.

G. T. Beauregard to Alex. Bonneval. 379 shares.

No. 123.] NEW ORLEANS, *Febr'y* 21*st*, 1868.

For value received, I hereby transfer unto Alex. Bonneval all my right, title, and interest in three hundred & seventy-nine shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

DOCUMENT No. 27.

Jos. Hernandez to Dominique Lanata. 50 shares.

No. 126.] NEW ORLEANS, 21*st Febr'y*, 1868.

For value received, I hereby transfer unto Dominique Lanata, esq., all my right, title, and interest in fifty shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

455 DOCUMENT No. 28.

Jos. Hernandez to Pablo Gelpi, sr., esq. 50 shares.

No. 127.] NEW ORLEANS, *Feb'ry* 21*st*, 1868.

For value received, I hereby transfer unto Pablo Gelpi, s'r, esq., all my right, title, and interest in fifty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 29.

Jos. Hernandez to Juliana W. Bland. 10 shares.

No. 319.] NEW ORLEANS, *August* 18*th*, 1868.

For value received, I hereby transfer unto Juliana W. Bland all my right, title, and interest in ten shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

456 DOCUMENT No. 30.

G. T. Beauregard to Le Sassier & Binder. 65 shares.

No. 300.] NEW ORLEANS, *July* 23*rd*, 1868.

For value received, I hereby transfer unto Le Sassier & Binder all my right, title, and interest in sixty-five shares in the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

DOCUMENT No. 31.

Alex. Bonneval to W'm P. Converse, sen'r. 55 shares.

No. 309.] NEW ORLEANS, 3*rd August*, 1868.

For value rec'd, I hereby transfer unto W'm P. Converse, sen'r,

right, title, and interest in five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:

DOCUMENT No. 41.

Alex. Bonneval to J. W. Black. 10 shares.

No. 377.] NEW ORLEANS, *Nov'r 13th*, 1868.

For value received, I hereby transfer unto J. W. Black all my right, title, and interest in ten shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. M. BRIDE.

462 DOCUMENT No. 42.

Jos. Hernandez to Cha's E. Fenner. 10 shares.

No. 390.] NEW ORLEANS, *Nov'r 27th*, 1868.

For value received, I hereby transfer unto Cha's E. Fenner all my right, title, and interest in ten shares of the capital stock of the New Orleans & Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 43.

G. T. Beauregard to Jos. Hernandez. 65 shares.

No. 299.] NEW ORLEANS, *July 23d*, 1868.

For value received, I hereby transfer unto Jos. Hernandez all my right, title, and interest in sixty-five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

G. T. BEAUREGARD.

Witness:
P. MCBRIDE.

463 DOCUMENT No. 44.

Jos. Hernandez to Tho's C. Brown. 75 shares.

No. 430.] NEW ORLEANS, *January 23d*, 1869.

For value received, I hereby transfer unto Tho's C. Brown all my right, title, and interest in seventy-five shares of the capital stock of the New-Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 45.

Jos. Hernandez to J. C. Brown. 34 shares.

No. 425.] NEW ORLEANS, *Jan'ry 22d*, 1869.

For value received, I hereby transfer unto J. C. Brown all my right, title, and interest in thirty-four shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

464 DOCUMENT No. 46.

Alex. Bonneval to A. Griffo. 2 shares.

No. 440.] NEW ORLEANS, *Jan'ry 30th*, 1869.

For value received, I hereby transfer unto A. Griffo all my right, title, and interest in two shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

DOCUMENT No. 47.

Alex. Bonneval to A. Bonneval & Co. 40 shares.

No. 378.] NEW ORLEANS, *Nov'r 18th*, 1868.

For value received, I hereby transfer unto A. Bonneval & Co. all my right, title, and interest in forty shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

465 DOCUMENT No. 48.

Jos. Hernandez to A. Bonneval & Co. 5 shares.

No. 504.] NEW ORLEANS, *April 17th*, 1869.

For value received, I hereby transfer unto A. Bonneval & Co. all my right, title, and interest in five shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

J. HERNANDEZ.

Witness:
P. MCBRIDE.

DOCUMENT No. 49.

Jos. Hernandez to S. M. Westmore. 16 shares.

No. 124.] NEW ORLEANS, *Feb'ry 21st*, 1868.

For value received, I hereby transfer unto S. M. Westmore all my

470 DOCUMENT No. 58.

Alex. Bonneval to Bonneval & Dolhonde. 90 shares.

No. 175.] NEW ORLEANS, *March 6th*, 1868.

For value received, I hereby transfer unto Mess'rs Bonneval & Dolhonde all my right, title, and interest in ninety shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

DOCUMENT No. 59.

Alex. Bonneval to Mary M. Converse. 15 shares.

No. 112.] NEW ORLEANS, 13*th Feb'ry*, 1868.

For value received, I hereby transfer unto M'r's Mary M. Converse all my right, title, and interest in fifteen shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

471 DOCUMENT No. 60.

Alex. Bonneval to J. W. Burbridge. 100 shares.

No. 220.] NEW ORLEANS, *April 8th*, 1868.

For value received, I hereby transfer unto J. W. Burbridge & Co. all my right, title, and interest in one hundred shares of the capital stock of the New Orleans and Carrollton Railroad Company, upon which are paid one hundred dollars per share.

ALEX. BONNEVAL.

Witness:
P. MCBRIDE.

Nineteen exhibits.—Filed with testimony, April 17th, 1871.

U. S. circuit court.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

Document marked "E. F." Copy of note marked "E. F."

2,666.66⅔.] NEW ORLEANS, 30*th April*, 1866.

One year after date we promise to pay to the order of ourselves the sum of two thousand six hundred and sixty-six $\frac{66}{100}$ dollars, for value

received, with interest at the rate of eight per centum per annum
472 from date until paid.

(Signed) G. T. BEAUREGARD.
(") T. P. MAY.
(") A. C. GRAHAM.

(Across the face, in red:)
Ne varietur. In conformity with an act before me, dated this day, duly stamped.
N. O., 30th April, 1866.

AMEDEE DUCATEL.

Cancelled.

(On the margin:) Amedee Ducatel, notary public.

(Across the face of the signatures:) Cancelled.

[Paulin Durel, printer, 39 Chartres str.]

(Endorsed:) May 3, '67. Note for $2,880.00, including interest. (Signed) G. T. Beauregard, T. P. May, A. C. Graham.

(Across the face of the signatures:) Cancelled.

(Endorsed also:) (Signed) G. T. Beauregard, 2, A. C. Graham, 2880, 3 May.

Document marked "F G." Copy of note marked "F G."

$4,166.66⅔.] NEW ORLEANS, *5th May*, 1866.

Two years after date we promise to pay to the order of ourselves the sum of four thousand one hundred and sixty-six $\frac{666}{100}$ dollars, for value received, with interest at the rate of eight per centum from date until paid.

(Signed) G. T. BEAUREGARD.
(") T. P. MAY.
(") A. C. GRAHAM.

(Across the face in red:)
Ne varietur. In conformity with an act before me, dated this day, duly stamped.
N. O., May 5th, 1866.

AMEDEE DUCATEL.

(On the margin:) Amedee Ducatel, notary public.

[Paulin Durel, printer, 37 Chartres street.]

(Endorsed:) April 7th, 1869. $4,166.66⅔. (Signed) G. T. Beau-
473 regard; (signed) T. P. May, A. C. Graham.

I subrogate to all the rights and interests which I have in and to the within note.

(Signed) W. C. RAYMOND.

NEW ORLEANS, *May 8th*, 1868.

Received interest in full to May 5th, 1869, and renewed to that date.

(Signed) W. C. RAYMOND.

Copy of document marked "G H." Copy of note marked "G H."

Interest 426.66, 2,666.66⅔—$3,093.32

NEW ORLEANS, *30th April*, 1866.

Two years after date we promise to pay to the order of ourselves the sum of two thousand six hundred and sixty-six $\frac{66\frac{2}{3}}{100}$ dollars, for value received, with interest at eight per centum per annum from date, until paid.

(Signed) G. T. BEAUREGARD.
(") T. P. MAY.
(") A. C. GRAHAM.

(Across the face, in red:)
Ne varietur. In conformity with an act before me, dated this day, duly stamped.
N. O., April, 1866.

AMEDEE DUCATEL.

Cancelled.

(On the margin:) Amedee Ducatel, notary public.

(Across the face of the signatures:) Cancelled.

[Paulin Durel, printer, 37 Chartres street.]

(Endorsed:) Paid May 1st, 1868.

(Endorsed also:) (Signed) G. T. Beauregard, T. P. May, A. C. Graham, 3,093.32, May 3, 1868. (Signed) G. T. Beauregard, T. P. May, A. C. Graham, T. Bailey Blanchard, j'r.

474 Copy of document marked "H I." Copy of note marked "H I."

4,333.33⅓.] NEW ORLEANS, *December 17th*, 1866.

Two years after date I promise to pay to the order of Thomas P. May, at the Canal Bank, in this city, the sum of forty-three hundred and thirty-three $\frac{33\frac{1}{3}}{100}$ dollars, value received, with interest at the rate of eight per centum per annum from date until paid.

G. T. BEAUREGARD,
Lessee.

(Across the face, in red:)
No. 2. Ne varietur. Secured by mortgage, duly stamped, $26.
New Orleans, 15 Jan'y, 1867.

S. MAGNER,
Not. Pub.

(On the margin:) E. G. Gottschalk, S. Magner; Gottschalk & Magner, notarial office, No. 156 Common st., New Orleans.

(Across the signature, in red:) Cancelled.

[T. Fitzwilliam, stationer & printer, 76 Camp st.]

(Endorsed:) (Signed) G. T. Beauregard, lessee; 5,026.67, Dec. 20. (Signed) T. P. May, for N. O. & Carrollton Railroad Co.; G. Currie Duncan, pres't. Octo. 9th, 1869. B. P. paid this day, $5,026\frac{67}{100}$.

(Endorsed also:)

N. O., *Dec'r 19th*, 1868.

By mutual consent, payment of the within note for five thousand and

twenty-six $\frac{67}{100}$ dollars is extended to the 19th December, 1869, interest thereon having been paid in advance.

(Signed) G. T. BEAUREGARD,
President.

475 Copy of document marked "I J," filed with testimony April 17th, 1871. Copy of note marked "I J."

5,026.67. $4,333.33⅓.] NEW ORLEANS, *December 17th*, 1866.

Two years after date, I promise to pay to the order of Thomas P. May, at the Canal Bank, in this city, the sum of forty-three hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum, from date until paid.

(Signed) G. T. BEAUREGARD, *Lessee.*

(Across the face, in red:)
No. 9. Ne varietur, secured by mortgage duly stamped $26. New Orleans, 15th Jan'y, 1867.

S. MAGNER. *Not. Pub.*

(On the margin:) E. G. Gottschalk, S. Magner. Gottschalk & Magner. Notarial office No. 158 Common street, New Orleans.
(Across the signature:) Cancelled.

[T. Fitzwilliam, stationer and printer, 76 Camp s't.]

(Endorsed:) 2683. (Signed) G. T. Beauregard, lessee. 5,026.67. Dec. 20. (Signed) T. P. May, for N. O. & Carrollton Railroad Co. G. Currie Duncan, president. Octo. 9, 1869. B | 6 paid this day $5,026.67.

(Endorsed also:)

NEW ORLEANS, *Dec. 19th*, 1868.

By mutual consent, payment of the within note for five thousand and twenty-six $\frac{67}{100}$ is extended without reservation to the 19th December, 1869, interest thereon having been paid in advance.

G. T. BEAUREGARD,
President.

476 Copy of document marked "J K," filed with testimony, April 17th, 1871. Copy of note marke' "J K.'

4,680.00. $4,333.33⅓] NEW ORLEANS, *December 17th*, 1866.

One year after date, I promise to pay to the order of Thomas P. May, at the Canal Bank in this city, the the sum of for'-three hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum, from date until paid.

G. T. BEAUREGARD, *Lessee.*

(Across the face, in red:)
No. 2. Ne varietur. Secured by mortgage duly stamped, $26. New Orleans, 15th Jan'y, 1867.

S. MAGNER,
Not. Pub.

The payment of this note is extended for one year from the 21st day of February, 1867, in conformity with an act executed before me this day and duly stamped.
New Orleans, Feb'y 19, 1869.

G. LE GARDEUR,
Not. Pub.

(On the margin:) E. G. Gottschalk, S. Magner. Gottschalk & Magner. Notarial office, No. 158 Common s't, New Orleans.
(Across the signature:) Cancelled.

[T. Fitzwilliam, stationer and printer, 76 Camp s't.]

(Endorsed:) 362. (Signed) G. T. Beauregard, $4,680. Dec. 20. (Signed) T. P. May, for N. O. & Carrollton R. R. Co. (Signed) G. Currie Duncan, pres't.

[$2.35 stamp.]

(Endorsed also:)

By mutual consent and without reservation, the payment of the within note is extended to the 21st Feb'ry, 1869, interest having been paid in advance.
New Orleans, Feb'y 21st, 1868.
(Signed) G. T. BEAUREGARD,
President N. O. & C. R. R. Co.

477 Copy of document marked "K L," filed with testimony, April 17th, 1871. Copy of note marked "K L."

$4,333.33⅓.] NEW ORLEANS, *December 17th*, 1866.

One year after date, I promise to pay to the order of M'r Thomas P. May, at the Canal Bank, in this city, the sum of forty-three hundred and thirty-three 33⅓-100 dollars, value received, with interest at the rate of eight per cent. per annum, from date until paid.
(Signed) G. T. BEAUREGARD, *Lessee.*
(Across the face, in red:)
No. 1. Ne varietur. Secured by mortgage*d*, duly stamped $26. New Orleans, 15 Jan'y, 1867.
S. MAGNER,
Not. Pub.

The payment of this note is extended for one year from the 21st day of February, 1869, in conformity with an act executed before me this day and duly stamped.
New Orleans, Feb'y 19, 1869.
G. L. E. GARDEUR,
Not. Pub.

(On the margin:) E. G. Gottschalk, S. Magner. Gottschalk & Magner. Notarial office, No. 158 Common street, New Orleans.
(Across the signature:) Cancelled.

[T. Fitzwilliam, stationer and printer, 76 Camp s't.]

(Endorsed:) 362. (Signed) G. T. Beauregard, 4680. Dec. 20. (Signed) T. P. May, for N. O. & Carrollton R. R. Co. (Signed) G. Currie Duncan, pres't.

[$2.15 stamp.]

(Endorsed also:)

By mutual consent, and without reservation, the payment of the within note is extended to the 21st Feb'ry, 1869, interest having been paid in advance.
New Orleans, Febr'y 21st, 1868.
(Signed) G. T. BEAUREGARD,
Pres't N. O. & C. R. R. Co.

478 Copy of document "L M," filed with testimony April 17th, 1871. Copy of check marked "L M."

[2 cents—G. T. B., April 26, 1866—stamp.]

No. 10.] NEW ORLEANS, *April 26th*, 1866.

First National Bank of New Orleans, pay to the order of widow T. J. Peters six thousand dollars.

(Signed) G. T. BEAUREGARD, *Lessee.*
(Signed) L. RICH'D PROCTOR.

$6,000.00.

[Bloomfield & Steel, 108 Camp s't, N. O.]

(Endorsed:) A. E. Peters. (Signed) E. F. La Villenure.

Copy of document marked "M N," filed with testimony April 17th, 1871. Copy of check marked "M N."

[2 cents—G. T. B., April 30, 1866—stamp.]

No. 14.] NEW ORLEANS, *April 30th*, 1866.

First National Bank of New Orleans, pay to the order of S. A. Kohn twenty-six hundred & sixty-six $\frac{65}{100}$ dollars ($2,666.65).

(Signed) G. T. BEAUREGARD, *Lessee.*
(Signed) L. RICH'D PROCTOR.

[Bloomfield & Steel, 108 Camp s't, N. O.]

(Endorsed:) (S'g'd.) Arthur Kohn, J. Kohn.

479 Copy of document marked "N O," filed with testimony April 17th, 1871. Copy of check marked "N O."

[2 cent—G. T. B., May 1, 1856—stamp.]

No. 36.] NEW ORLEANS, *May 5*, 1866.

First National Bank of New Orleans pay to the order of W. C. Raymond forty-one hundred & sixty-six $\frac{65}{100}$ dollars ($4,166.65).

(Signed) G. T. BEAUREGARD, *Lessee.*
(Signed) T. RICH'D PROCTOR.

[Bloomfield & Steel, 108 Camp s't, N. O.]

(Endorsed:) (Signed) W. C. Raymond.

Copy of document marked "O P," filed with testimony April 17, 1871. Copy of check marked "O. P."

[2 cents—G. T. B., June 30, 1866—stamp.]

No. 136.] NEW ORLEANS, *June 30*, 1866.

First National Bank of New Orleans, pay to the order of G. C. Duncan, or bearer, eight thousand six hundred & sixty-six $\frac{66}{100}$ dollars.

$8,666.66.

(Signed) G. T. BEAUREGARD,
P'r pro. T. P. MAY.
(Signed) T. RIC'D PROCTOR.

[Bloomfield & Steel, 108 Camp s't, N. O.]

(Endorsed:) (Signed) Gottschalk & Magner, reps.

480 Copy of document marked "P Q," filed with testimony April 17th, 1871. Copy of check marked "P Q."

[2 cents—G. T. B., May 3, 1867—stamp.]

No. 402.] NEW ORLEANS, *May 3d*, 1867.

First National Bank of New Orleans, pay to the order of bearer twenty-eight hundred & eighty dollars.

$2,880.00.

(Signed) G. T. BEAUREGARD, *Lessee.*
(Signed) T. RICH'D PROCTOR.

[J. Fitzwilliams, stationer, No. 76 Camp s't, N. O.]

Copy of document marked "Q R," filed with testimony April 17th, 1871. Copy of note marked "Q R."

$4,166.66⅔.] NEW ORLEANS, *5th May*, 1866.

One year after date we promise to pay to the order of ourselves, the sum of four thousand one hundred and sixty-six 66⅔-100 dollars, for value received, with interest at the rate of eight per centum per annum from date until paid.

(Signed) G. T. BEAUREGARD.
(") T. P. MAY.
(") A. C. GRAHAM.

(Across the face in red:) Ne varietur. In conformity with an act before me dated this day, duly stamped.
No. , 5th May, 1866.

AMEDEE DUCATEL.

Paid.

AMEDEE DUCATEL,
Notary Public.

(Across the signature:) Cancelled.

[Paulin Durel, printer, 37 Chartres.]

(Endorsed:) (Signed) G. T. Beauregard, T. P. May, A. C. Graham.
(Across the signature:) Cancelled.

(Endorsed also:) May 8th, 1867. No. 6. Note including interest $4,500.00.

481 Copy of document marked "R S," filed with testimony April 17th, 1871. Copy of check marked "R S."

[$1.55—G. T. B., Jan'y 28, 1867—stamp.]

No. 286.] NEW ORLEANS, *January 15th*, 1867.

First National Bank of New Orleans, pay to the order Gottschalk & Magner, eighty-six hundred and sixty-six $\frac{66}{100}$ dollars.

$8,666.66.

(Signed) G. T. BEAUREGARD.
(Signed) T. RICH'D PROCTOR.

[T. Fitzwilliams, stationer, No. 76 Camp s't, N. O.]

(Endorsed:) (Signed) Gottschalk & Magner.

Copy of document marked "S T." Filed with testimony April 17th, 1871. Copy of note marked "S T."

90.30, $3,010.00—3,100.30.

NEW ORLEANS, *March 28th*, 1867.

Six months after date the New Orleans and Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of D'r Joseph Elliott three thousand and ten dollars for value received, with interest at 6 per cent. per annum till maturity.

Due Oct. 1, '67.

(Signed) G. T. BEAUREGARD,
Lessee.

(Across the signature:) Cancelled.

[$1.55, stamp, G. T. B., March 82, 1867.]

(Endorsed:) O., A. 1st, 1867. B. P., $3,010, 90.30—$3,100.30.

(Endorsed also:) Pay Bank of America,

482 Copy of document marked "T U." Filed with testimony April 17, 1871. Copy of note marked "T U."

[New Orleans & Carrollton Railroad, G. T. Beauregard, lessee.]

$3,010.00, 135.45—$3,145.45.

NEW ORLEANS, *March 28th*, 1867.

Nine months after date, the New Orleans & Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of D'r Joseph Elliott three thousand and ten dollars for value received, with interest at 6% per annum till maturity.

(Signed) G. T. BEAUREGARD,
Lessee.

(Across the signature:) Cancelled.

Due Dec. 31, '67.

(Endorsed:) Dec. 31st, '67. Bills payable, $3,145.45.

(Endorsed also:) Pay Bank of America,

Copy of document marked "U V." Filed with testimony April 17, 1871. Copy of note marked "U V."

[New Orleans and Carrollton Railroad, G. T. Beauregard, lessee.]

4,500, 270—$4,770.00.

NEW ORLEANS, *April 24th*, 1867.

Nine months after date, the New Orleans and Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of D'r Jos.

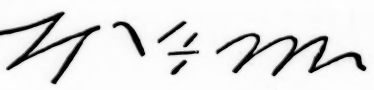
483 Elliott four thousand five hundred dollars for value received, in mules, with interest at eight per cent. per annum until maturity.
(Signed) G. T. BEAUREGARD,
Lessee.

(Across the signature:) Cancelled.

[2 dollars. New Orleans & Carrollton. April 2d. Stamp.]

(Endorsed:) 6174. N. O. Carrollton R. R. 4770. 27 Jan'y, '68.

(Endorsed also:) N. O. Carrollton R. R. G. T. Beauregard. 4,500, 278—4,778. January 27, '68.



Copy of document V W. Filed with testimony April 17th, 1871. Copy of note marked "V W."

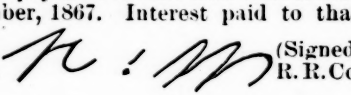
[New Orleans and Carrollton Railroad, G. T. Beauregard, lessee.]

$4,500.] NEW ORLEANS, LA., *April 24th*, 1867.

Six months after date the New Orleans & Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of D'r Joseph Elliott four thousand five hundred dollars, for value received in mules, with interest at eight per cent. per annum until maturity.
(Signed) G. T. BEAUREGARD,
Lessee.

(Across the signature:) Cancelled.

484 (Endorsed:) By consent, the payment of the note is extended to the twenty-sixth of November, 1867. Interest paid to that date. New Orleans, Octo. 26, '67. (Signed) B. L. Millandon, president N. O. & C. R. R. Co.

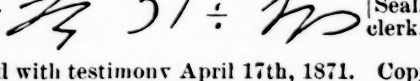


[$4.50. Stamp.]

(Endorsed also:)

Received in ⅞ of the within note one hundred eighty-six dollars.

New Orleans, Oct. 26th, 1867. [Seal.]
(Signed) Paul Delery, note clerk.



Copy of document W X. Filed with testimony April 17th, 1871. Copy of note marked "W X."

[New Orleans and Carrollton Railroad, G. T. Beauregard, lessee.]

$4,500.] NEW ORLEANS, LA., *April 24th*, 1867.

Ninety days after date the New Orleans & Carrollton Railroad, G. T. Beauregard, lessee, promises to pay to the order of D'r Joseph Elliott four thousand five hundred dollars, for value received in mules,
485 with interest at eight per cent. per annum until maturity.
(Signed) G. T. BEAUREGARD,
Lessee.

(Across the face, in red:)

NEW ORLEANS, *Aug. 31st*, 1867.

Rec'd payment from Mess'rs A. Bonneval, Jos. Hernandez, & Geo. Binder, with interest & protest fees.

PAUL DELERRY,
Note Clerk, Citizens' Bank.

(Across the signature:) Cancelled.

(Endorsed:) N. O. & Carrollton R. R. 4,500, 93—$4,593. July 26, '67.

(Endorsed, also:)

Copy of document marked "Y Z." Filed with testimony April 17, 1871.

[New Orleans & Carrollton Railroad, G. T. Beauregard, lessee.]

NEW ORLEANS, *Sept. 14th*, 1866.

I. P. MAY, Esq.,

DEAR SIR: Including pay-rolls for last month, we have now about thirty thousand dollars due. The balance in bank is three hundred and ninety-five dollars and twelve cents. Will you be good enough to let me know what I am to do in the premises.

Very respectfully, y'r ob't s'v't,
(Signed) T. RICH'D PROCTOR,
Cashier.

486 Five exhibits, marked "A B," "B A," "B C," "C D," "D E." Filed with testimony May 2, 1871.

United States circuit court, district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

EXHIBIT A B.

Copy of account of A. C. Graham with First National Bank of New Orleans, from ledger 2, beginning with the year 1866.

D'R. *A. C. Graham in ⅌c with First National Bank N. O.* C'R.

1866.				1866.			
Jan'y	3	To check	300	Jan'y	1	By bal. from ledger 1	$11,594 40
	9	"	384 71		12	" cash	1,000 00
	11	"	115		"	" "	500 00
	15	"	87 90		18	" ex	11,540 49
	17	"	30,189 30	Feb'y	2	"	1,000
	18	"	10,000 00		7	"	29,900
	19	"	240 00		8	"	64 04
	24	"	400 40		28	" Graham, H. G. & Co.	10,000
	25	"	4,807 95	M'ch	3	"	5,000
	"	"	235		10	"	125
	26	"	100		26	" the folio 542	19 35
	26	"	29 85	Ap'l	23	"	2,000
	27	"	100 00		27	"	92,347 13
	29	"	100 00		30	"	4,500 00
	30	"	2,800 00				
	"	"	6,017 50				
	Feb'y	1 "	21 00				
487	Feb'y	2 To check	300				
	3	"	582 81				
	6	"	5,000				
	10	"	67 50				
	12	"	850				
	13	"	163 70				
	14	"	19,447 62				
	"	"	150				

Copy of account of A. C. Graham—Continued.

D'R. *A. C Graham in ⅜c with First National Bank N. O.* C'R.

Feb'y	15	To check	18 05				
	16	"	50				
	17	"	44 31				
	20	"	271 30				
	24	"	50				
March	3	"	319				
	"	"	40 70				
	5	"	760 40				
	9	"	5,000 00				
	12	"	255 57				
	21	"	19 35				
	23	"	2,000				
	24	"	200				
	26	"	300				
	27	"	873 04				
	28	"	120 96				
	29	"	130 20				
	31	"	504 50				
April	5	"	82 30				
	6	"	120 50				
	9	"	460 33				
	10	"	313 90				
488	1866.						
	April	12 To check	52 85				
	19	"	2,600 00				
	24	"	528 00				
	30	"	2,494 98				
		Balance	70,092 93				
			169,590 41				169,590 41
May	2	To check	300	May	1	By balance	70,092 93
	"	"	542 85		5	" cash	12,700
	4	"	20,000			To balance	872 44
	7	"	862 99				
	8	"	30,000 00				
	11	"	106 65				
	16	"	100 00				
	18	"	545 65				
	25	"	10,000 00				
	29	"	644 23				
June	9	"	20,000 00				
	16	"	563 00				
			83,665 37				83,666 37
June	16	To balance	872 44	June	30	By balance	3,061 00
	27	" check	533 25		"	" ex	200,000 00
	30		744 95	July	2	" cash	11,466 67
July	2		200 00		7	" "	28,340 11
	3		4,395 31		12	" "	2,613 27
	"		200	Sept.	5	" Cha's Claiborne	100 00
	5		889 87		6	" gold ex	11,000 00
	"		80 50		8	" " cash	14,000 00
	6		24 65				
	7		200,667 52				
	10		20,000 00				
489	July	12. To check	280 00				
	"	" "	10,025				
	13.	"	200				
	14.	"	768 65				
	"	"	750				
	24.	"	175 50				
	26.	"	308				
Aug.	7.	"	3 30				
	30.	"	1,492 24				
Sept.	3.	"	300 00				
	"	"	674 13				
	10.	" gold	25,000				
	"	"	806 31				
			1,159 53				
			270,581 05				270,581 05
Sept'r	26.	To check	17 50	Sept.	10.	By balance	1,159 53
	27.	"	3 83		17.	" B. F. Flanders	50
Oct.	3.	"	300	Oct.	11.	" to gen'l b'k ac	50,000

Copy of account of A. C. Graham—Continued.

D'R. *A. C. Graham in ⅜ with First National Bank N. O.* C'R.

Oct.	4.	To check	137 25	Dec.	3.	By cash	438 54
	6.	"	65 95			Balance to ledg. 3	5,363 54
	8.	"	366 26				
	10.	" gold	50,000				
	13.	"	414 56				
Nov.	26.	"	342 70				
Dec.	3.	"	300 00				
	15.	"	3,970 00				
	19.	"	1,093 54				
			57,011 61				57,011 61
1867.				1867.			
Janu'y	1.	To bal. from ledg. 2	5,363 54	Jan'y	21.	By cash	4,911 25
	4.	" check	300 00				
490	Janu.	1. To check	4,911 25				
	Feb'y	20. " 2	1,100				
M'ch	1.	"	76 25				
"	7.	"	375				

Account verified by me.

LOUIS MEIG.

EXHIBIT B A.

Copy of account of A. C. Graham, agent, New York, with First National Bank of New Orleans, from the general ledger, commencing October, 1866.

1866.				1866.			
Oct.	19.	To Com. Ex. B'k	200,000	Octo.	22.	By dep. with N't'l B'k State of N. Y	100,000
"	"	" " " " "	200,000	Dec.	21.	" U. S. c'y by express	250,000
"	"	" Jay Cooke & Co	238,643 29	"	26.	" dep. with 4th N't'l B'k N. Y	76,266 60
"	"	" 1st Nat'l Washington	350,000	"	28.	" £14,220⅘ sent L'pool	94,252 04
Dec.	26.	" proceeds sales Dec. 19th	175,518 64	"	"	" 1st N't'l Mobile	5,000
1867.				1867.			
Jan'y	3.	" his check on 4th N't'l N. York	25,494 93	Jan'ry	3.	" £20,000 sent to L'pool	128,997 68
"	"	" fr's 394,508.35, sold Dec. 26th	103,502 75		11.	" 1st N't'l N. O	17,500
"	11.	" " 50,000, sold Jan'y 5th	12,699 40		"	" 1st N't'l Mobile	2,500
"	"	" bal. 100 gold for ac	1,257 71		"	" £11,000 sent L'pool	70,770 34
"	22.	" Ja's A. Raynor	9,788 49		"	" sundries per ac. Janu'ry 5th	97 52
Feb'ry	7.	" £5,000, sold Jan'y 25	32,356 81		15.	" dep. with 4th N't'l N. Y.	100,000
"	"	" $600 gold sold	789 15		18.	" " " " "	100,000
"	8.	" proceeds sale Jan'y 30th	46,887 55		26.	" H. Banshir's, d'f't on us	675 38
"	9.	" " " Feb'y 2d	32,587 27		31.	" 1st N't'l N. O	14,000
"	12.	" " " " 6th	57,727 79		"	" 1st N't'l Mobile	4,600
"	25.	" " " " 18th	191,737 58	Feb'y	7.	" dep. with 4th N't'l N. Y.	13,631 80
M'ch	4.	" his check on 4th N't'l N. Y., Jan'y 8th	76,910 75	"	"	" " " " "	46,887 55
"	6.	" proceeds sale Feb'ry 27th	219,349 47	"	"	" " " "	200,000
"	7.	" N't'l Bank State N. Y	20,000	"	"	" B'k State of N. Y	159 85
"	13.	" proceeds Texas bonds, Feb'ry 11	3,000	"	"	" sundries per ac. Jan'y 25th	78 93
491	1866.			Feb'y	11.	By dep. with 4th N't'l B'k N. Y	20,000 00
	March 29.	To dep. on 4th N't'l B'k N. Y. (error)	20,000 00		12.	" dep. with 4th N't'l B'k N. Y	200,000 00
May	9.	To proceeds £1 774.15 9	11,625 04	"	"	" dep. with B'k State of N. Y	130 00
"	"	" " sal s M'ch 28th	292,451 57	"	"	ass't tr. N. O	225 00
	"	pro. M. B. Brady	4 86	"	"	less on 100,000 gold in N. Y	1,125
				"	"	com. tel. & per ac. Feb'y 6	267 47
					13.	" dep. with 4th N't'l N. Y.	37,918 29
					19.	" " " "	30,000
				"	"	$30,300 Mex. bonds	4,848
					21.	" 1st N't'l N. O	17,000
				"	"	1st " Mobile	3,000
				"	"	dep. with 4th N't'l N. Y.	40,000
					23.	" " " " "	9,788 49

EXHIBIT B A.—Continued.

		Feb'y	25.	By dep. with 4th Nt'l N. Y.	107, 561 77
			"	" " " " " "	270
			"	" d'f't on T. P. May.....	100, 000
			26.	" R. W. Doyle.....	500
			27.	" dep. B'k State of N. Y.	120 65
			"	" telegram	4 75
			28.	" loss per ac. Feb'y 21...	2, 662 39
		M'ch	6.	" dep. in 4th N't'l N. Y...	214, 263 53
			"	" " B'k State of N. Y..	1, 300
			"	" " " " " "	123 55
			"	" 1st N't'l N. O.....	1, 700
			9.	" H. H. Malone	130
		Ap'l	1.	" dep. with 4th N't'l N. Y.	100, 000
		May	1.	" " " " " "	50, 000
		"	2.	" " " " " "	20, 000
		"	9.	" £5,000 sent to L'pool..	33, 384 68
	2, 322, 333 05				2, 221, 041 26

Account verified by me.

LOUIS MEIG.

492 EXHIBIT B C.—*Filed with testimony May 2d*, 1871.

For value received the undersigned hereby assigns unto A. C. Graham, eight hundred & ninety shares of the capital stock of the First National Bank of New Orleans, in the city of New Orleans, this 7th day of May, anno Domini 1867.

D. B. FORBES,
Trustee.

890 shares.

EXHIBIT C D.—*Filed with testimony May 2d*, 1871.

a/c sales £31,000 st'g. F'cs 50,000 for a/c of the First National Bank of N. C.

547–8–51.	£ 5,000	First Nat'l Bank N. O.	on bank L'pool,	@ 108¼	24, 111 11		
549–50.	" 3,000	do.	do.	@ 108¼	14, 466 67		
552–54.	" 3,000	do.	do.	@ 108¼, ⅛	14, 457 63		
565.	" 2,000	do.	do.	@ 108⅜	9, 644 44		
566–71.	" 3,000	do.	do.	@ 108⅜	14, 466 67		
567–70.	" 5,000	do.	do.	@ 108¼	24, 111 11		
3, 665–75.	" 10,000	Canal Banking Co.	on London Joint Stock Bank	@ 108¼	48, 222 22		
	£31, 000				149, 479 85		
	Com. ¼%				186 85		
							149, 293 00
3, 838–9.	F'cs 50,000	Lafi'te, Dufillor & Co.	on M. N. Borde & Co.,	@ 52½-¼	9, 557 42		
	Com. ¼%				23 89		
							9, 533 53
					Gold		$158, 826 53
	$55,000 gold, @ (sale of Feb'ry 26th) @ 138				75, 900		
	$103, 826 53 a/c " " 27th @ 138½				143, 669 96		
					$219, 569 96		
	Com. ½% on gold			$198 53			
	Gov. tax " currency			21 96			
					220 49		
	Net proceeds, currency						$219, 349 47

493 E. & O. E.
New York Febr'y 27th, 1867.

A. C. GRAHAM,
Per D. H. LATHAM.

First National Bank N. O. in ac. with A. C. Graham.

1867.			
Feb'ry 21.	To balance as per a/c rendered	$2,662 39	
" 23.	" draft of C. Bullitt	1,000	
" 25.	" deposited in Bank of State of N. Y	1,300	
" 26.	" " " " " " " "	123 55	
" 27.	By net proceeds as per a/c sales annexed		219,349 47
" "	To balance to new a/c	214,263 53	
		219,349 47	219,349 47
" 27.	By balance from old a/c		$214,263 53

E. & O. E.

A. C. GRAHAM,
Per D. H. LATHAM.

EXHIBIT D E.—Filed with testimony May 2d, 1871.

NEW ORLEANS, *Sept. 8th*, 1866.

Special meeting.

Present, Mess. A. C. Graham, president; T. P. May, Miles Taylor, and F. J. Herron.

M'r Graham, president, requested leave of absence for three weeks, to attend to business in New York; which was granted.

On motion, Thomas P. May, esqr., was elected president pro
494 tempore.

Adjourned.

D. B. FORBES, *Cashier.*

NEW ORLEANS, *Oct. 6th*, 1866.

Special meeting.

At a special meeting of the board of directors held to-day, present, T. P. May, president pro tem.; F. J. Herron, W. M. Perkins, and Miles Taylor, the resignation of A. C. Graham, esq., as president of the bank, was laid before the board by the president pro tem., as follows:

NEW YORK, *Sept. 26th*, 1866.

To the board of directors of the First National Bank of New Orleans, La.:

GENTLEMEN: I am most respectfully compelled to tender you my resignation as president of your institution, owing chiefly to my domestic duties requiring of me a prolonged absence from your midst. In severing so pleasant a connection, permit me to offer you my very warm and sincere acknowledgments for the confidence and kindness that you have ever manifested towards me, and my heartfelt wishes for your future success and happiness.

495 I am, gentlemen, with high regard, very truly, yours,
(Signed) A. C. GRAHAM.

Whereupon it was unanimously,

Resolved, That the board of directors accept the resignation of A. C.

Graham as president of the bank, and that in doing so they can but express their profound regret that anything should have required him to sever his relations with them as their president; and

Resolved, That the board of directors, in behalf of the stockholders of the bank and themselves, now return to M'r Graham their sincere thanks for the faithful and efficient manner in which he has discharged his duties as an officer of the bank from its organization to the present time.

And it was further

Resolved, That the board now proceed to an election of president in place of M'r Graham, resigned.

And an election having been holden, it appeared that Thomas P. May, esq., was unanimously elected president. It was then

Resolved, That in view of the peculiar of the mone-
496 tary affairs of the country that the bank have a financial agent appointed to act for the bank in the city of New York, and it was then

Resolved, That A. C. Graham, esqr., be appointed the financial agent.

Adj'd.

D. B. FORBES, *Cas.*

NEW ORLEANS, *Nov. 26th*, 1866.

Regular meeting.

Present, Mess. May, Taylor, Perkins.

Minutes of previous meeting read and approved.

On motion of Miles Taylor, esq., a dividend of ten per cent. for the last six months was declared, payable to the stockholders or their legal representatives on and after the first Monday in December next.

Adjourned.

D. B. FORBES, *Cas.*

NEW ORLEANS, *Jan'ry 15th*, 1867.

Regular meeting.

Present, T. P. May, Miles Taylor, W. M. Perkins, F. J. Herron, J. S. Whitaker, D. B. Forbes.

A certificate of James Graham, Tho's Jauney, and Alex. Bonneval,
inspectors of election, that at an election by the stockholders on
497 the 7th inst. for directors of this bank for the ensuing year the following persons were elected: Tho's P. May, A. C. Graham, W. M. Perkins, F. J. Herron, Miles Taylor, J. S. Whitaker, Gordon Granger, D. B. Forbes, Robt. Watson.

The minutes of the previous meeting were read and approved.

On motion, the board proceeded to the election of president, when Thomas P. May was unanimously re-elected for the ensuing year.

On motion of Miles Taylor,

Resolved, That section 4 of the by-laws of this bank be amended by inserting after the word president in the first line the words vice-president.

On motion, the board then proceeded to the election of vice-president, when D. B. Forbes was unanimously elected.

On motion, M'r Louis Meig was elected acting cashier of the bank.

The president appointed as the committee to examine the cash and other assetts of the bank Mess. Perkins, Whitaker, Herron, & A. Taylor.

On motion, adjourned.

NEW ORLEANS, *March 20th*, 1867.

Special meeting.

Present, Mess. May, Taylor, Perkins, & Forbes.

498 The president stated that the object of the meeting was for the purpose of considering the propriety of purchasing property for a banking-house in view of the fact that the lease of the property now occupied by us could not be removed on favorable terms even were it commodi'us enough for our business wants.

On motion of M'r Perkins, the president was requested to obtain from C. E. Giriarday & Co., a proposition for the sale to us of the property situated at the corner of Canal & Camp streets, belonging to Henry Hart, and to act upon it as he might deem best for the interest of the bank.

There being no further business the board adjourned.

NEW ORLEANS, *March 25th*, 1867.

Special meeting.

Present, Mess. May, Taylor, Perkins, & Forbes.

The president read the following letter:

NEW ORLEANS, *March* 21, 1867.

Hon. T. P. MAY,

Pres't First National Bank:

499 D'R SIR: We are authorized to offer you the property forming the corner of Canal & Camp streets, formerly occupied by M. Judson, for the sum of ninety-five thousand dollars, assuming fifty-four thousand dollars, payable about 2d Jan'ry, 1868, and the balance cash.

This property is under a lease until the 1st January, 1868, at the rate of about ($9,000) nine thousand dollars per annum, payable monthly in advance; $13,000 has since been offered for it. The credit portion bears 8 per cent. per ann. interest.

Hoping to hear from you at once, remain, sir, very respectfully, yours, &c.,

(Signed) C. E. GIRARDEY & CO.

To which letter the president informed the board that he had replied, offering ninety thousand dollars upon the same terms as specified and received the following answer:

NEW ORLEANS, *March 25th*, 1867.

Hon. T. P. MAY,

Pres't First National Bank of New Orleans:

D'R SIR: Your offer of ninety thousand dollars for the property situated on the corner of Canal & Camp streets, on the terms mentioned in our note to you of 21st instant, has been submitted to the

500 owner, M'r Henry Hart, and we take pleasure in now notifying you that we are authorized to accept it.

Very respectfully, y'r ob. serv't,

(Signed) C. E. GIRARDEY & CO.,

Auct'rs.

On motion of Miles Taylor, esq.,

Resolved, That the president or the vice-president of this bank be authorized to complete the purchase of the property at the corner of Camp and Canal streets for a banking-house for the association, agreeably to the terms proposed by C. E. Girardey & Co., for Henry Hart, in their letter of 25th inst.

Adjourned.

NEW ORLEANS, *April 8th*, 1867.

Special meeting.

Present, Mess. May, Taylor, & Perkins, & Forbes.

The minutes of the previous meeting was read and approved.

Statement of the bank read.

M'r Forbes having retired from the meeting, M'r May announced his resignation of the presidency of the bank, whereupon M'r D. B. Forbes was elected president in his stead.

Adjourned.

501 United States circuit court, 5th circuit & district of Louisiana, in chancery.

CHA'S CASE, RECEIVER OF THE 1ST NAT'L BANK of New Orleans, *vs.* G. T. BEAUREGARD ET ALS. } No. 5931.

Testimony of Louis Meig, taken March 4th, 1871, pursuant to notice, before Honl. I. B. Weller, master in chancery for said court, examiner.

Present, I. D. Rouse, esq'r, solicitor for complainant; L. E. Simonds, esq'r, Mess'rs Lea, Tinney & Miller, solicitors for Hernandez, Binder, Bonneval, Beauregard, & the N. O. & C. R. R. Co., def'ts; W. W. King, esqr., solicitor for the 4th Nat'l B'k of N. O.; I. W. Gurley, esqr., asst. U. S. att'y for U. S.

Specially reported by C. W. Colton, stenographer.

Testimony filed May 2d, 1871.

502 LOUIS MEIG sworn & examined on behalf of the complainant.

By M'r Rouse:

Q. Do you reside in New Orleans?

A. Yes, sir.

Q. Are you of lawful age?

A. Yes, sir.

Q. Were you in any way connected with the First National Bank of New Orleans?

A. Yes, sir.

Q. State what your office was in that bank in 1866 and 1867.

A. In 1866 I was discount and exchange clerk up to the middle of January, 1867, and then I was acting cashier as well as occupying the same position I have already mentioned.

Q. Please examine the account of G. T. Beauregard, lessee, in the books of the First National Bank of New Orleans, at the entry of the 15th September, 1866. (Shown said books.)

A. The account of G. T. Beauregard, lessee, on these books now examined by me, shows that on the 15th day of September, 1866, an entry was made to the credit of said Beauregard, lessee, of forty thousand two hundred and sixty-three dollars and seventy cents ($40,263.70).

503 Q. Do you know what that credit consisted of?

A. It consisted of cash; it is cash entered here.

Q. Do you know the particulars of that credit, or how it came to be entered?

A. It must have been a note for forty thousand dollars and the balance in cash.

Q. On that day, previous to the entry of that credit, how did that account stand?

A. There is a credit of seven thousand six hundred and fifty-four dollars and eighty-one cents ($7,654.81) at the end of the fifteenth.

Q. If that credit had not been entered, how would the account have stood at the close of that day?

A. It would have been overdrawn by about thirty-two thousand and some odd dollars.

Q. Have you ever seen that paper before? (Shown note annexed to complainant's bill.)

A. Yes, sir.

Q. How did that note come into the possession of the bank?

504 A. It was given by M'r Beauregard to M'r May.

Q. What was done with that note?

A. It was handed to the receiving teller as cash money, and the account of Beauregard was credited with the amount of it.

Q. That amount being how much?

A. Forty thousand dollars.

Q. When was that amount credited on the account of Beauregard, lessee?

A. On the fifteenth of September.

Q. How was the note counted in the bank after it was credited?

A. It was placed in the paying teller's hands as cash money.

Q. And counted as cash?

A. Yes, sir; payable at any call.

Q. Examine again that account of Beauregard, lessee, on the books of the First National Bank, on the 19th March, 1867, and state what entry you find on that account of that date.

A. There is an entry on the account of Beauregard, lessee, to his credit on that date of one hundred and forty-two dollars ($142.00) and one hundred and twenty-five thousand dollars ($125,000.00).

Q. On that day previous to the entry of the credit of one hun-

505 dred and twenty five thousand dollars, how did that account stand?

A. There was an overdraft on the evening of the 18th of one hundred and twenty-one thousand one hundred and nine dollars and thirty cents ($121,109.30).

Q. How was it on the evening of the 19th, or how would it have been if that credit had not been entered? It was the same on the morning of the 19th, was it not?

A. Yes, sir; it was the same in the morning before the bank opened.

Q. What was that credit for? What was it based upon?

A. On exchange based on nothing at all. It was to deface the overdraft on account of the examiner being at the bank.

Q. Look at this paper and state what it is. (Shown bill of exchange

for one hundred and twenty-five thousand dollars, annexed to complainant's bill.)

A. This is the exchange which was credited on the account of Beauregard, lessee, on the books of the bank on the morning of the 19th March, 1867.

Q. Who directed that to be credited?

A. The president.

506 Q. Who was he?

A. M'r Forbes.

Q. Why was it ordered to be credited?

A. Because the account of Beauregard, lessee, was largely overdrawn, and it was against the national-bank law to allow a larger overdraft than fifty thousand dollars.

Q. They were expecting the examiner, were they not?

A. He was there already.

Q. Examining the bank?

A. Examining the bank, but before he made the examination this matter was arranged.

Q. It was done for the purpose of concealing the overdraft?

A. Yes, sir.

(Objected to by M'r Miller on the ground that it was merely an expression of opinion on the part of the witness.)

Q. How do you know that fact?

A. Because M'r Forbes told me afterwards that this should be changed again, when we had time to make another entry in the books, to make it appear in the way it was before.

Q. How was that draft for one hundred and twenty-five thousand dollars counted in the book?

507 A. It was passed to the exchange book and charged in the general ledger in the account of exchange on New York. In this account the time-paper unmatured was placed.

Q. Was M'r May present on the nineteenth of March, 1867?

A. Yes, sir: he was in the office with M'r Forbes.

Q. Was he present at the time this direction was given to you to make this entry?

A. It was M'r Forbes that came out to me and told me to make this entry. M'r Beauregard was also sent for at the same time and notified that this was the case.

Q. Were you present when he was notified?

A. I saw him coming out with M'r Forbes and M'r May at the time.

Q. Did you hear him say anything about it?

A. No, sir; I did not hear anything. All this took place immediately after the conversation that we had.

Q. Did you have any further directions about this draft after this date?

508 A. I asked M'r Forbes several times if I should not make the counter entry of these one hundred and twenty-five thousand dollars.

(Counsel for defendants here objected to all statements of M'r Forbes and all other parties to the witness as hearsay evidence.)

WITNESS. He told me that as soon as we had better times he would make the change again.

Q. Please examine that account of Beauregard, lessee, at the entry of May 4th, 1866, and state what credit you find entered on that date.

A. I find a credit of twenty thousand dollars.

Q. Examine the account again at the entry of the 9th June.

A. I find a credit on that date of twenty thousand three hundred and eighty-three dollars and sixty-five cents ($20,383.$\frac{65}{100}$.)

Q. What credit do you find on that account on the 10th July?

A. Twenty thousand four hundred and forty-three dollars and eighty cents ($20,443.$\frac{80}{100}$.)

Q. Please examine the account of A. C. Graham on those same
509 books of the First National Bank, and state what entry you find on the debit side of that account under date of May 4th, 1866.

A. Twenty thousand dollars.

Q. Do you know what that was for?

A. It is so long ago that I cannot recollect that.

Q. What debit do you find to that account on the 9th June?

A. The same amount, twenty thousand dollars.

Q. And on the 10th July what debit do you find?

A. Twenty thousand dollars.

Q. And on the 8th May, 1866, what debit do you find?

A. Thirty thousand dollars.

Q. How did the account of Graham stand on the 4th May, 1866? State whether there was a balance to his credit or debit, and how much it was.

A. He had a credit on that date of forty-nine thousand two hundred and fifty dollars and eight cents ($49,250.08).

Q. That was after the twenty thousand dollars was entered?

510 A. That was after the twenty thousand dollars was debited.

Q. At the close of May 8th, what was the balance to his credit after he was charged with the thirty thousand dollars?

A. Thirty-one thousand nine hundred and fifty-nine dollars and fifty-three cents ($31,959.$\frac{53}{100}$).

Q. On the 9th June, after having been charged with the twenty thousand dollars you have mentioned, how did his account stand?

A. There were three hundred and nine dollars and forty-four cents to his debit.

Q. And on the 10th July, after having been charged with twenty thousand dollars, how did his account stand?

A. Fourteen thousand two hundred and twenty-nine dollars and twenty-nine cents ($14,229.$\frac{29}{100}$) to his credit.

Q. What was the state of the account of A. C. Graham in the First National Bank at its close on the 13th May, 1867?

A. It was overdrawn seven thousand two hundred and fourteen dollars and seventy-nine cents ($7,214.$\frac{79}{100}$).

511 Q. What connection had A. C. Graham with that bank from October, 1866, until its close in May, 1867?

A. He acted as agent in New York for the First National Bank.

Q. Is there an account with him as agent on the books of said bank?

A. Yes, sir, in the general ledger.

Q. What was the condition of his account as agent at the close of the bank?

A. He was owing a hundred and one thousand two hundred and ninety-one dollars and seventy-nine cents ($101,291.$\frac{79}{100}$) as agent for the bank, as shown by the account.

Q. Do you know that he actually owed that amount?

A. Yes, sir; I do know it.

Q. How did the indebtedness occur?

A. The bank sent him papers to sell in New York, and for two months before the bank closed he did not come up promptly any more, and did

not deposit the money at the Fourth National Bank, which was the bank that we were drawing on. We stopped sending him any more exchange to sell, as he could not come up in payment.

512 (M'r Rouse here offered in evidence the account in the books of the First National Bank with A. C. Graham individually, and also the account with A. C. Graham as financial agent for the First National Bank in the city of New York.

It was then agreed to by all parties concerned that the annexed documents, marked "A B" and "B A," verified by the witness, are correct transcripts of said accounts from the books of the First National Bank.)

Examination resumed by M'r Rouse:

Q. Did A. C. Graham make any offer to settle this balance against him as agent of the First National Bank at New York?

A. He made his promises, but he did not come up to them. Up to the time that the bank stopped he made offers to do so.

Q. Did he draw upon anybody for any amount?

A. He drew on T. P. May.

Q. For how much; for the amount of the balance?

513 A. For one hundred thousand dollars. It was in my hands for collection.

Q. Was that draft accepted by May?

A. Yes, sir.

Q. Was it paid?

A. Not as long as I was in the bank it was not paid. It was not due at the time the bank closed, and so it was not paid then.

Q. Do you know anything about the manner in which Beauregard, lessee, drew the money from the bank that is charged against him in his account?

A. Yes, sir; he drew it out by small amounts, sometimes a thousand dollars, every day something.

Q. What instructions were given to you or to other officers of the bank by any one in regard to accepting his checks, and by whom were those instructions given?

A. The paying-teller received orders to pay them just as other checks.

Q. Without regard to the state of the account?

A. Without regarding the account.

Q. Who gave those orders?

A. The orders were given at the time of the opening of the account with the railroad.

514 Q. Who gave those orders?

A. They were probably given by M'r Forbes to the paying teller. The paying-teller paid his checks just as any other checks without regard to the state of the account.

Q. Do you know what A. C. Graham's financial condition was on the 13th of May, 1867?

A. The officers of the bank considered his state of affairs financially very poor.

(M'r Miller objected on the ground that it was merely an expression of the opinion of the witness.)

Q. What was his general reputation among the officers of the bank as to his solvency or insolvency?

(M'r Miller objected.)

A. Our opinion was that he was nearly broke. That was our opinion at the latter part of the existence of the bank.

(M'r Miller objected to the answer as an expression of the opinion of the witness.)

Q. Was the settlement of his balance regarded as doubtful or otherwise?

A. It was considered doubtful.

515 (M'r Miller objected on the same ground.)

Q. Was he a stockholder in the bank?

A. He was.

Q. Do you know how many shares of stock he had?

A. I could not state without referring to the stock-ledger.

Q. Examine this stock-ledger of the First National Bank and state what amount of stock M'r A. C. Graham held at the time of the failure of the bank on the 13th May, 1867. (Shown said book.)

A. He had nine hundred shares.

By M'r Miller:

Q. How much were the shares?

A. One hundred dollars each.

By M'r Rouse:

Q. Examine this book and state whether it is the transfer book of the First National Bank. (Shown book.)

A. Yes, sir; this is the stock-transfer book of the bank.

Q. State whether or not there is a transfer there to A. C. Graham?

A. Yes, sir.

Q. Of what date?

A. On the seventh day of May, 1867.

516 Q. By whom?

A. By D. B. Forbes, trustee.

Q. How many shares?

A. Eight hundred and ninety shares.

Q. Do you know the signature of D. B. Forbes, trustee?

A. Yes, sir.

Q. Have you seen him write frequently?

A. Yes, sir.

Q. Is that his genuine signature to that transfer?

A. Yes, sir.

(M'r Rouse here offered in evidence the transfer referred to, a copy of which is annexed to the deposition of this witness, marked "B C.")

Q. State whether there was any transfer of that stock by A. C. Graham in said transfer book to any one.

A. (After examining transfer book.) The stock was never transferred; there is no transfer shown by this book.

Q. Was that the only transfer book kept by the bank?

A. Yes, sir.

Q. Please examine the account now handed to you and state

517 what it is. (Shown document.)

A. It is a statement of exchange sold between A. C. Graham as agent of the First National Bank and the First National Bank.

Q. By whom was it rendered?

A. By M'r A. C. Graham; by his clerk, M'r Latham.

Q. How much does it show?

A. Two hundred and fourteen thousand, two hundred and sixty-three dollas and fifty-three cents ($214,263 $\frac{53}{100}$).

(M'r Rouse offered in evidence said account, which is annexed hereto and marked "C D C.")

Q. Do you know of any property that M'r A. C. Graham has that might be subject to a judgment for his debt in this city or elsewhere?
A. No, sir; he has no property here, so far as I know. He has no property here to my knowledge.

By M'r King:

Q. You are well acquainted with M'r Graham, are you not?
A. Yes, sir.

Cross-examined by M'r Miller:

518 Q Who entered the credit of forty thousand dollars?
A. The book-keeper.
Q. Who did the bank receive that note from?
A. We received it from M'r Thomas P. May.
Q. Were you present when M'r Herron endorsed it?
A. No, sir.
Q. Was M'r Beauregard at the bank at the time it was drawn or endorsed?
A. I cannot recollect.
Q. These checks of Beauregard, which were paid in excess of the account, were paid under instructions from whom?
A. Under instructions from the president.
Q. Were those instructions special?
A. They were told to the paying teller.
Q. Were they general instructions or were they given at each time that a check was presented?
A. They were given at the time the account was opened; as soon as the account was opened there were no other instructions necessary. I think they were given at the time the accounts were opened.
519 The instructions were to pay the checks that he presented without reference to deposits.
Q. Look at the account of Beauregard, lessee, in the books of the First National Bank and state whether that account was overdrawn at the close of September 5th.
A. Yes, sir.
Q. How was it at the close of September 6th?
A. It was still overdrawn.
Q. How did it stand on September 6th?
A. He had overdrawn on that date seven thousand three hundred and twenty-five dollars ($7,325).
Q. Now, then, on September 5th how did it stand?
A. There was a credit of one thousand two hundred and thirteen dollars and seventy-four cents ($1,213.$\frac{74}{100}$).
Q. Who handed the draft for one hundred and twenty-five thousand dollars to the book-keeper?
A. It was handed to me only.
Q. By D. B. Forbes?
A. Yes, sir.
Q. Did any one else speak to you about it at the time?
A. No, sir; it was made out by M'r Thomas P. May and handed to me by M'r D. B. Forbes.
520 Q. You do not know what passed between Thomas P. May and D. B. Forbes on the subject?
A. My knowledge is that the account was largely overdrawn.
Q. You do not know what passed between them on that morning?
A. I could not say what the conversation was between them.

Q. You have alluded to four credits in the account of A. C. Graham; did A. C. Graham ever deposit any money in your bank?

A. He made deposits in the bank.

Q. To your personal knowledge?

A. To my personal knowledge.

Q. Were those credits entered up there under the direction of anybody?

A. They were entered up just as the credits of any one else.

Q. Were they entered up in accordance with any special directions of anybody in the bank?

A. Not to my knowledge.

Q. What was A. C. Graham's business there at that time?

A. He was cashier in the beginning, and afterwards president.

Q. Had he any other business?

A. He was first bookkeeper in some insurance company and
521 some other stock companies.

Q. The relations between A. C. Graham and Thomas P. May were very intimate, were they not?

A. Yes, sir.

Q. Did A. C. Graham make those deposits personally, or did any one else make them for him?

A. He made them personally through his clerk.

Q. He had a clerk there, then?

A. Yes, sir.

Q. How much money, to your knowledge, did he deposit in that bank?

A. Well, I could not tell you that exactly; the account shows it.

Q. You have no personal knowledge of the fact, have you?

A. The only personal knowledge I have is that he made deposits.

Q. To what extent does your personal knowledge extend?

A. He made some very large deposits and some smaller deposits?

Q. Did he keep a bank-book?

A. Yes, sir.

The witness here desired to correct his testimony, in so far as he had stated that M'r D. B. Forbes was president of the First National
522 Bank on the nineteenth of March, 1867. He desired to state that M'r Forbes was vice-president of the bank at that time, and that M'r Thomas P. May was president at that time.

LOUIS MEIG.

Sworn to before me this 4th March, 1871.

JOHN B. WELLER,
U. S. Com'r & Master in Chancery.

The taking of the testimony in this case was then continued until Tuesday, the seventh day of March, 1871.

523 UNITED STATES OF AMERICA,
District of Louisiana:

I do hereby certify that the foregoing witness, Louis Meig, was sworn by me and his testimony was taken in phonograph characters by C. W. Colten, and subsequently translated by him. I do also certify that on this day the said Colton appeared before me and on oath declared that the foregoing translation is in all respects correct.

Given under my hand and seal, at New Orleans, in the district aforesaid, this 1st of May, 1871.

[SEAL.]

JOHN B. WELLER,
U. S. Com. & Master in Chancery.

524 U. S. circuit court. 5th circuit and district of L'a. In chancery

CHA'S CASE, RECEIVER OF THE 1ST NAT'L BANK of New Orleans, *vs.* G. T. BEAUREGARD ET ALS. } No. 5931.

TUESDAY, *March 7th*, 1871.

Examination of complainant's witnesses before Hon'l J. B. Weller, master in chancery, examiner, resumed pursuant to adjournment of the 4th inst.

Present, J. D. Rouse, solicitor for complainant.

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" " D. B. Forbes 13
" " Philip Helen 40
" " Louis Meig, recalled 52

Specially reported by C. W. Colton, stenographer.
Testimony filed May 2d, 1871.

525 W'M M. PERKINS, sworn and examined on behalf of the complainant.

By M'r Rouse:

Q. You were a director in the First National Bank of New Orleans, I believe?

A. I was.

Q. Were you a director of that bank at the time of its failure on the thirteenth day of May, 1867?

A. I was.

Q. How long before that had you been a director?

A. Since about January of the preceding year. I think it was for a year and three or four months that I was in there before the failure.

Q. State, if you please, how often the directors of the bank had meetings for the transaction of business.

A. Really, I am not able to say how often.

Q. Did they meet regularly?

A. They did not.

Q. State how many meetings of the board of directors took place within nine months of the time of the failure of the bank.

526 A. It is impossible for me to answer that question. I have nothing to guide me and my memory does not serve me. I was absent in New York during a portion of the year.

Q. What portion of the year were you absent?

A. July, August, and September, I think. I was usually absent during those months.

Q. Did the board of directors often have a quorum at the meetings?

A. They did not; they seldom had one.

Q. Was paper laid before them for their approval for discount?

A. Not to my recollection—indeed I am quite sure that I never saw any.

Q. Who was the principal manager of the bank during the time you were director?

A. M'r A. C. Graham, at first for several months, and then M'r Thomas P. May.

Q. Did they consult the board of directors as to the disposition of the funds of the bank or the management of them?

A. They did in some respects; once in reference to purchasing a banking house, I recollect.

527 Q. As a general thing, did they consult the board of directors?

A. No, sir; with regard to the disposition of the funds they did not, so far as I know.

Q. What knowledge had you, as a director of that bank or otherwise, of the account of G. T. Beauregard, lessee?

A. I had no knowledge of it whatever. I knew nothing of it until I was spoken to by M'r Knox, the agent of the government, who came here at the time of the failure of the bank.

Q. What knowledge had you of a credit of forty thousand dollars in that account in September, 1866?

A. I do not know anything about it. I never heard of it before. I do not think I was present in New Orleans in September, 1866.

Q. Did you have any knowledge of that credit after you returned?

A. No, sir; I never heard of it until now, that I know of. This question of yours is the first intimation I ever had of it.

Q. What knowledge had you of a credit of one hundred and twenty-five thousand dollars in the account of Beauregard, lessee, in March, 1867?

528 A. I had no knowledge of it at all.

Q. Was there a bill of exchange for one hundred and twenty-five thousand dollars, drawn by T. P. May upon A. C. Graham, in March, 1867, submitted to the board of directors?

A. Not to my knowledge.

Q. As a director and stockholder in said bank, did you have any knowledge of a note drawn by G. T. Beauregard, lessee, per pro T. P. May, for forty thousand dollars upon demand?

A. I did not.

Q. What knowledge had you, if any, of the discount by said bank of notes drawn by H. T. Hays, Walton & Deslonde, I. B. Walton, I. O. Nixon, F. I. Herron, or Richard Taylor, or any one of them?

A. I do not recollect to have heard anything of any of those notes until after the failure of the bank.

A. They were never submitted to the action of the board when you were present?

A. Not in my presence nor to my knowledge.

Q. Was the matter of the account of Beauregard, lessee, ever

529 brought to the attention of the board of directors?

A. Never that I recollect.

Q. Were you in the habit of attending the regular meetings of the board?

A. I attended to the meetings to which I was specially called. The regular meetings, or the meetings fixed by the by-laws, were not regularly attended. I went several times when I first became a director and I found there was no quorum present and no regular session, and afterwards I went only when I was sent for and specially invited.

Q. Is it to your knowledge that regular meetings of the board were not held, or that it was understood that the members would be invited to attend when meetings were held?

A. I do not know that there was any specified understanding on that subject. I know that there were repeated failures to get a quorum at

was a hundred and twenty-two thousand dollars, and he just drew a bill for a hundred and twenty-five thousand dollars.

Q. How often did the board of directors of the First National Bank during the year prior to the failure of the said bank have meetings?

536 A. Oh, I do not know. I was never present but at one meeting, and that was just after I was elected vice-president. I attended but three meetings of the board after I became a director. I wish to state also that I was cashier for a year before, and I was never once notified to meet the board, although it is usual always for the cashier of the bank to act as secretary of the board, and that was something I did not understand. I could not ask them to notify me.

Q. How many meetings did they have after you became a director prior to the failure?

A. Only these three; I was present; I was right on the spot. The three last meetings of the board I was there.

Q. Who wrote up the minutes of the meetings of the board of directors?

A. I did.

Q. Are these now shown to you the minutes which you prepared? (Shown book.)

A. Yes, sir.

(M'r Rouse, counsel for complainant, here offered in evidence
537 the minutes of the board of directors of the First National Bank of New Orleans from September 8th, 1866, to April 8th, 1867, a copy of which minutes is hereto annexed and marked D, E.)

Q. Was the portfolio of the bank laid before the directors at their meetings?

A. No, sir; they never asked for it. It was always ready, but they never asked for it.

Q. Did the board ever examine the discount of the bank before discounting it?

A. Not before it was discounted. In the first commencement of the bank, they did.

Q. From September, 1866, up to the time of the failure of the bank in 1867, how often was there paper laid before the board of directors for its action before discounting it?

A. Never, that I know of.

Q. Was the attention of the board called to the state of the account of Beauregard, lessee?

A. I cannot answer for the statement to the board until January. I was not present until then. I can state from the minutes only.
538 I was not present at the meetings of the board until January, 1867.

Q. Well, after you became a director?

A. No, sir; nothing of the kind was done.

Q. Had the board of directors, as a board, any knowledge of the bill of exchange about which you have testified?

A. I do not know that they had, sir. They used occasionally to look over the books. They had no regular examination for some time.

Q. During the presidency of Tho's P. May in that bank, who had the control and management of its assets, and of its operations?

A. He had, sir; so far as that is concerned.

Q. With reference to the board of directors or without?

A. He was the board, you may say, for he used to loan money out

whenever he saw proper, without any consultation with the board that I know anything about.

Q. Do you know personally whether A. C. Graham kept an account in that bank?

A. Yes, sir.

539 Q. When he was president of it?

A. Yes, sir.

Q. Was that an individual account?

A. Yes, sir. He kept an account even when he was cashier, before he became president.

Q. Do you know, of your own knowledge, whether he made frequent deposits in that bank?

A. Yes, sir; I believe he did.

Q. Up to large amounts?

A. I believe so. I do not recollect the state of the accounts. I had so many other things to do that I did not keep the run of the individual ledger, but I know that he had an account, because I saw it, and saw checks drawn.

Q. What position did A. C. Graham hold with regard to the bank after he ceased to be president of the bank?

A. He was the agent in New York for the bank for the purchase and sale of sterling exchange, and other things. He was what was called an agent for the bank.

Q. Did he render accounts current from time to time?

A. Yes, sir; from time to time.

540 Q. Who usually signed those accounts current?

A. They were sometimes signed by him, and sometimes signed for him by his clerk, M'r Latham.

Q. Would you know the signature of M'r Latham?

A. Yes, sir; I would know it.

Q. Please examine the signature annexed to the account current attached to the deposition of Louis Meig, marked "C, D," and state whether or not it is the signature of M'r Latham. (Shown said account current.)

A. Yes, sir; that is his signature.

Q. What was A. C. Graham's financial condition at the time the bank failed?

A. I really do not know. He was in New York.

Q. Do you know whether he was indebted to the bank at that time or not?

A. Individually or as agent?

Q. Either way.

A. He had no individual account with the bank then—only as agent. He may have had a small account individually, because he went away before closing it, and T. P. May held his power of attorney.

541 Q. Do you remember what the state of his account was as agent for the bank?

A. I cannot recollect without reference to the books.

Q. Do you know whether he was indebted to the bank or not at the time of its failure?

A. I do not know.

Q. I want to call your attention to the fact that he gave a draft on May.

A. At the time he rendered the account he was indebted in a balance of one hundred thousand dollars, for which he gave a draft on T. P. May,

which was accepted by Mr May, but never paid; at least it was never paid at the time the bank suspended, and I do not believe it was paid yet.

Q. Did he settle that balance in any other way besides by that draft?

A. No, sir.

Q. Have you seen him since then?

A. I have.

Q. Where?

A. In New York.

Q. What did he say about that draft?

342 A. He said that if he had drawn it at eight instead of drawing a time bill, it would have been paid out of the money in the hands of Mr May, but as it was a time bill and May had accepted it, it did not mature until after the bank suspended, and consequently it was not paid, and that the government had attached the funds of Mr May.

Q. What did he say about his financial condition?

A. He told me that he was very poor, also that all the assistance he got was from his wife's friends, or father, or some of his relatives.

Q. He claimed to be dependent upon them?

A. Well, in fact, he told me that he had nothing of his own, and that it was not for his wife's father being wealthy he did not know what he would do. That was in the summer of 1866.

Q. What reason did he give for being in the financial condition that he claimed to be in.

A. I do not recollect about that. He said that his interest in property of his grandma's he would like to have conveyed to the government.

Q. Did he say what that property was?

A. I cannot remember. I think he mentioned this cotton business, whether I think he said something about a cotton factory. I am not certain, but I think he said something about a cotton factory.

(Cross-examination resumed, and the evidence of Mr Thomas was here closed.)

D. B. THOMAS.

Sworn to this 7th January, 1871.

JOHN D. WILLIAMS,
U. S. C. & Exam'r in Chancery.

[illegible] sworn and examined, on behalf of the complainant:

By Mr Jones:

Q. What connection had you with the First National Bank of [illegible]?

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. [illegible]

A. [illegible]

Q. What do you know about the facts connected with that credit?

A. I took it from the receiving teller's books or his deposit
545 ticket at that time, but what it was composed of I do not know. Whether it was money or whether it was a check I do not know.

Q. Examine the account of A. C. Graham individually with said bank from the 16th of April, 1866, to its close, and state whether you kept that account.

A. Yes, sir; I did.

Q. Do you know of your own personal knowledge whether he made deposits in that bank?

A. Yes, sir; he made deposits.

Q. From what did you take the amounts you have charged in that account?

A. Well, checks.

Q. Checks drawn by him?

A. Yes, sir.

Q. Were the entries made directly from the checks themselves?

A. From the checks themselves.

Q. By you?

A. By me.

Q. Examine the entry to the debit of A. C. Graham, on the 4th of May, 1866, and state what it is.

A. It is a check.

Q. For how much?

A. Twenty thousand dollars.

546 Q. Examine the entry to his debit on the 9th of June.

A. That is another check for twenty thousand dollars.

Q. Examine the entry to the debit of his account on the 10th of July.

A. That is a check too, for the same amount, twenty thousand dollars.

Q. Examine the entry to his debit on the 8th of May, 1866, and state what it is.

A. That is a check too, but I cannot state whether it is one check or several. It might be several checks or several amounts.

Q. How much is the aggregate?

A. Thirty thousand dollars.

Q. On the 4th of May, 1866, prior to the debit of twenty thousand dollars, how much had A. C. Graham to his credit in the bank?

A. Sixty-nine thousand two hundred and fifty dollars and eight cents ($69,250.08).

Q. On the 9th of June how much had he to his credit prior to the payment of the check for twenty thousand dollars?

A. Nineteen thousand six hundred and ninety dollars and fifty-six cents ($19,690.56).

Q. On the 10th of July, prior to the payment of his check for
547 twenty thousand dollars, how much had he to his credit in said bank?

A. Thirty-four thousand two hundred and twenty-nine dollars and twenty-nine cents ($34,229.29).

Q What cr. do you find upon the account of G. T. Beauregard, lessee, on the 4th of May, 1866?

A. Twenty thousand dollars.

Q. Do you know what that was composed of?

A. According to the books it appears to be a check.

Q. On the 9th of June, what credit do you find on that account?

which was accepted by M'r May, but never paid; at least, it was never paid at the time the bank suspended, and I do not believe it is paid yet.

Q. Did he settle that balance in any other way besides by that draft?

A. No, sir.

Q. Have you seen him since then?

A. I have.

Q. Where?

A. In New York.

Q. What did he say about that draft?

542 A. He said that if he had drawn it at sight instead of drawing a time bill, it would have been paid out of the money to the credit of M'r May, but as it was a time bill and May had accepted it, it did not mature until after the bank suspended, and consequently it was not paid, and that the government had attached the funds of M'r May.

Q. What did he say about his financial condition?

A. He told me that he was very poor, and that all the assistance he got was from his wife's friends, or father, or some of her relatives.

Q. He claimed to be dependent upon them?

A. Well, in fact, he told me that he had nothing of his own, and that if it was not for his wife's father being wealthy he did not know what he would do. That was in the summer of 1868.

Q. What reason did he give for being in the financial condition that he claimed to be in.

543 A. I do not recollect about that. He said that May had transferred property of his (Graham's) to secure May's indebtedness to the government.

Q. Did he say what that property was?

A. I cannot remember. I think he mentioned this railroad business, and then I think he said something about a planting interest. I am not certain, but I think he said something about a planting interest.

(Cross-examination resumed, and the evidence of M'r Forbes was here closed.)

D. B. FORBES.

Sworn to this 7th March, 1871.

JOHN B. WELLER,
U. S. C. & Master in Chancery.

544 PHILIP HELEN, sworn and examined on behalf of the complainant.

By M'r Rouse:

Q. What connection had you with the First National Bank of New Orleans?

A. I was individual bookkeeper.

Q. During what time?

A. From 1864, I believe about five or six months after the time that the bank started, until it failed on the 13th May, 1867.

Q. Did you keep the account of G. T. Beauregard, lessee?

A. Yes, sir.

Q. Examine the entry on the credit side of the account of Beauregard, lessee, on the books of the First National Bank on the 15th of September, and state what it is.

A. The amount is forty thousand two hundred and seventy-three dollars and seventy cents ($40,273.70).

Q. What does it appear to be?

A. Cash.

Q. What do you know about the facts connected with that credit?

A. I took it from the receiving teller's books or his deposit
545 ticket at that time, but what it was composed of I do not know. Whether it was money or whether it was a check I do not know.

Q. Examine the account of A. C. Graham individually with said bank from the 16th of April, 1866, to its close, and state whether you kept that account.

A. Yes, sir; I did.

Q. Do you know of your own personal knowledge whether he made deposits in that bank?

A. Yes, sir; he made deposits.

Q. From what did you take the amounts you have charged in that account?

A. Well, checks.

Q. Checks drawn by him?

A. Yes, sir.

Q. Were the entries made directly from the checks themselves?

A. From the checks themselves.

Q. By you?

A. By me.

Q. Examine the entry to the debit of A. C. Graham, on the 4th of May, 1866, and state what it is.

A. It is a check.

Q. For how much?

A. Twenty thousand dollars.

546 Q. Examine the entry to his debit on the 9th of June.

A. That is another check for twenty thousand dollars.

Q. Examine the entry to the debit of his account on the 10th of July.

A. That is a check too, for the same amount, twenty thousand dollars.

Q. Examine the entry to his debit on the 8th of May, 1866, and state what it is.

A. That is a check too, but I cannot state whether it is one check or several. It might be several checks or several amounts.

Q. How much is the aggregate?

A. Thirty thousand dollars.

Q. On the 4th of May, 1866, prior to the debit of twenty thousand dollars, how much had A. C. Graham to his credit in the bank?

A. Sixty-nine thousand two hundred and fifty dollars and eight cents ($69,250.08).

Q. On the 9th of June how much had he to his credit prior to the payment of the check for twenty thousand dollars?

A. Nineteen thousand six hundred and ninety dollars and fifty-six cents ($19,690.56).

Q. On the 10th of July, prior to the payment of his check for
547 twenty thousand dollars, how much had he to his credit in said bank?

A. Thirty-four thousand two hundred and twenty-nine dollars and twenty-nine cents ($34,229.29).

Q What cr. do you find upon the account of G. T. Beauregard, lessee, on the 4th of May, 1866?

A. Twenty thousand dollars.

Q. Do you know what that was composed of?

A. According to the books it appears to be a check.

Q. On the 9th of June, what credit do you find on that account?

A. Twenty thousand three hundred and eighty-three dollars and sixty-five cents ($20,383.65).

Q. Do you know what it was composed of?

A. It appears, as I looked on Sunday at the receiving teller's check-book, that it was a twenty thousand dollar check, and that the three hundred and eighty-three dollars and odd cents were composed of some other cash.

Q. On the 10th of July, 1866, what credit was entered on the account of Beauregard, lessee?

A. Twenty thousand four hundred and forty-three dollars and
548 eighty cents ($20,443.80).

Q. What was that credit composed of?

A. A check for twenty thousand dollars, and the four hundred and forty-three dollars and some odd cents were some other cash. I don't know what.

Q. What do you know about the instructions which were given in regard to the account of Beauregard, lessee?

A. When the first overdrafts were made I reported.

Q. To whom?

A. To the president at that time. I do not know who was president at that time, whether it was M'r May or M'r Graham, but they told me it was all right.

Q. Did you report again?

A. I reported several times that the account was overdrawn. I was always answered "that is all right." Then I did not report any more. I put the overdraft in a little book that I had expressly for the purpose of putting overdrafts in. In that book I put every morning the accounts that were overdrawn and the amount of the overdrafts, and the president looked at that book every day. Those he wanted me to notify I notified.

549 Q. Did he ever ask you to notify Beauregard, lessee?

A. Never.

Q. How long did that continue in that way?

A. Well, from the first overdraft until about the end of the bank, when the bank failed.

Q. During the whole of this time who was president of the bank?

A. M'r May, and afterwards M'r Forbes.

Q. Did M'r May examine this book, showing the overdrafts that you speak of?

A. Yes, sir; I showed him that book. I had that book in my desk open every day so that they could see it.

Q. Did he ever give any reasons to you or to any one why the account was allowed to be overdrawn?

A. No, sir; all I know was that I had to pay his checks.

Q. Were you acquainted with the signatures of Thomas P. May and A. C. Graham?

A. Yes, sir.

Q. And of Beauregard, lessee?

A. Yes, sir.

Q. Did you enter up all the checks drawn by Beauregard, lessee, in that account?

A. Yes, sir.

550 Q. Turn to the account of Beauregard, lessee, in the books of the First National Bank on the 19th of March, 1867, and state what credit you find on that account under that date. Speak only of the largest credit.

A. One hundred and twenty-five thousand dollars.

Q. Do you know what that credit consisted of?

A. By the ticket I could tell exactly. It appears here as cash. If I could see the depcsit-ticket it would explain whether it was exchange or cash, or whatever it was.

PH. HELM.

Cross-examination reserved.

Sworn to this 7th March, 1871.

[SEAL.]

JOHN B. WELLER,
U. S. C. & Master in Chancery.

551 LOUIS MEIG, recalled on behalf of the complainant.

By M'r Rouse:

Q. What directions did you receive from any one at the time the draft for one hundred and twenty-five thousand dollars (about which you have testified) was entered up in the bank in March, 1867, about said draft?

A. I was instructed to pass it to the cashier's account, and the general bookkeeper was instructed to pass it to exchange on New York.

Q. Who gave you that instruction?

A. M'r Forbes.

Q. Why was this done?

A. To make the overdraft of G. T. Beauregard, lessee, disappear.

Q. What object had they in that at that particular time?

A. There was an examiner of the banks present, and it was in order not to show him the overdraft in this account, it being against the national banking law to have such a large overdraft.

Q. What was said to you about exhibiting the draft to the examiner?

A. I was told not to show it.

Q. Who told you not to show it?

A. M'r Forbes.

552 Q. Did he give any reason?

A. He told me that it was merely a transfer, which would be made contra after the bank examiner was gone again.

Q. Were you present at the time that John J. Knox took possession of the bank, on the 13th of May, 1867?

A. Yes, sir.

Q. Who remained in charge of that bank until the receiver was appointed and took charge of its assets? Who had control of it?

A. M'r Knox & Meline had the control of it. There was no president any more. I remained in the bank.

Q. Did not M'r Knox control it?

A. He took control on the morning of the day after the failure.

Q. How long did he have charge and control of it?

A. He had control of it about two weeks, when M'r Case took possession of the bank.

Q. Was he much of the time during those two weeks in the bank?

A. Yes, sir; mostly every day.

Q. Was there any business done then as a bank?

A. No, sir.

Q. Did he examine the accounts and assets of the bank?

553 A. Yes, sir.

Q. Who else was there as an agent of the government.

A. M'r Meline was there also; he was an agent for the government also.

Q. Did he examine the accounts?
A. He examined the assets and accounts.

LOUIS MEIG.

Cross-examination reserved.

Sworn to this 7th March, 1871.

JOHN B. WELLER,
U. S. C. & Master in Chancery.

UNITED STATES OF AMERICA,
District of Louisiana:

I do hereby certify that the foregoing witnesses, to wit, W'm M. Perkins, D. B. Forbes, Philip Helm, and Louis Meig were duly sworn by me, and that the testimony was taken down by C. W. Colton in phonographic characters and subsequently translated by him. I do also certify that on this day he appeared before me and on oath declared that the foregoing translations are correct in all respects.

Given under my hand & seal at New Orleans this 1st May, 1871.

JOHN B. WELLER,
U. S. Com. & Master in Chancery.

554 Counsel for defendants object to all the testimony of the four foregoing witnesses as to any statements made to them by A. C. Graham, T. P. May, and others, to which they testify, upon the ground that such testimony is hearsay, and res inter alias as to the defendants. Counsel for defendants also reserve all other legal objections to the testimony to be urged upon the trial.

555 U. S. circuit court 5th circuit and dist. of Louisiana. In chancery.

CHA'S CASE, RECEIVER FIRST NATIONAL BANK,
vs.
G. T. BEAUREGARD ET ALS. } No. 5931.

SATURDAY, *April 8th*, 1871.

Testimony taken before hon'l. J. B. Weller, master in chancery.

Present, J. D. Rouse, esqr., sol'r for compl't; Mess'rs Lea, Finney & Miller, solicitors for Beauregard, Bonneval, Binder, Hernandez, & Carrolton R. R. Co.; J. W. Gurley, esqr., solicitor for the U. S.; W. W. King, esqr., solicitor for 4th Nat. B'k of N. Y.

Testimony of Frank F. Case. Specially reported by C. W. Colton, stenographer. Testimony filed May 2d, 1871.

556 FRANK F. CASE sworn and examined on behalf of complainant.

By M'r Rouse:

Q. What is your employment with the receiver of the First National Bank?
A. Book-keeper and cashier.
Q. How long have you been so employed by him?
A. Since the fifteenth of December, 1867.
Q. Has your employment been such as to give you a knowledge of the condition of the affairs of that bank, of the value of its assets, and of the amount of liabilities existing against it?

A. Yes, sir.

Q. State what deficits in collectable assets there will probably be as compared with the liabilities of the bank.

A. The deficits will probably be between six and seven hundred thousand dollars.

Q. Your knowledge of the assets is such as to enable you to form an opinion of their value?

A. Yes, sir.

Q. And you think that after all that is collectable or been collected there will still be a deficiency of more than six hundred thousand dollars?

557

A. Yes, sir.

Or that sum less than the liabilities of the bank exclusive of the liabilities as capital?

A. Yes, sir,

Cross-examined by M'r Miller:

Q. Have you any personal knowledge of these liabilities of the bank?

A. Yes, sir; I have examined them and made the statements from the books.

Q. Is your knowledge altogether derived from the books?

A. From the books of the bank and the receiver's books and the notes and bills on hand.

Q. Do you know the signatures to those notes and bills?

A. No, sir.

Q. Do you know the condition of the parties who signed those notes and bills?

A. A great many of them are in bankruptcy. That is my knowledge. We have received notices from the bankrupt court to that effect.

Q. You say a great many of them; what knowledge have you of those of whom you have not received notices from the bankrupt court?

558

A. From general reputation they are not considered worth anything.

Q. Has the government ever made any claim upon the receiver upon this check for $315,779?

A. I would not be certain about that, but I think they have.

Q. Does the government now hold that check?

A. Yes, sir.

Q. In reference to this draft for one hundred thousand dollars, accepted by Thomas P. May, to which some reference was made on Saturday, have you ever seen it?

A. I believe I have; I cannot say for certain.

Q. Where is it now?

A. That I cannot tell.

Q. Who holds that bill now?

A. I think the receiver of the bank holds it.

Redirect by M'r Rouse:

Q. You know, do you not, the fact that debtors of the bank to a large amount, who are not in bankruptcy, are not worth sufficient property to enable the receiver to realize the amount of their debts?

559

A. Yes, sir; I know that to be the fact. We have judgments against a great many of them and we cannot realize on those judgments.

(M'r Miller objected to any testimony in reference to any judgments, on the ground that the judgments themselves and the writs of fieri facias issued thereon, if any, should be produced.)

Q. Do you not know that you have made inquiries as to whether judgments could be collected against many parties who were largely owing the bank, and have ascertained that no property of theirs was visible for the purposes of realizing the debts?

A. Yes, sir; I have made some inquiries.

Q. You know the fact of the liabilities against the bank in a great measure from having, in your capacity as clerk for the receiver, received the proof of those liabilities?

A. Yes, sir; I have made up the certificates in nearly all the cases.

(M'r Miller objected, on the ground that the proofs referred to should be produced themselves.)

560 Q. Have you not made up the certificates in nearly all cases since you have been acting with the receiver, which he has given to creditors of the bank?

A. Yes, sir.

FRANK F. CASE.

(M'r Miller objected to any evidence concerning the certificates referred to, on the ground that the certificates themselves are the best evidence.)

Sworn to before me the 8th April, 1871.

[SEAL.] JOHN B. WELLER,
U. S. C. & Master in Chancery.

561 UNITED STATES OF AMERICA,
District of Louisiana:

I do hereby certify that the foregoing witness, Frank F. Case, was sworn before me, and that his testimony was taken in phonographic characters by C. W. Colton, and subsequently translated by him. I do also certify that on this day the said Colton appeared before me and declared on oath that the foregoing translation is all respects correct.

Given under my hand and seal at New Orleans, in the district aforesaid, this 1st of May, 1871.

JOHN B. WELLER,
U. S. Com. & Master in Chancery.

562 *Motion and order, cause set down for hearing.—Entered & filed June 7th*, 1871.

United States circuit court, fifth circuit & district of Louisiana. In Chancery.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

On motion of J. D. Rouse, solicitor for complainant,

It is ordered that publication of the testimony taken herein do pass, and *and* that the cause be set down for hearing upon Thurs lay, the 8th inst., at 11 o'clock a. m., and that respondents be notified thereof.

Notice of trial.—Issued 6th June, 1871.

Circuit court of the United States for the fifth judicial circuit and dis't of L'a.

CHA'S CASE, RECEIVER, &c.
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

You are hereby notified that this case is assigned for trial for Thursday, the 8th day of June, A. D. 1871, at 11 o'clock, a. m.

By order of the court.

563 Witness my hand and seal of the said court, at New Orleans, this 6th day of June, A. D. 1871.

F. B. VINOT,
D'y Clerk.

To Elmore & King, Lea, Finney & Miller, L. E. Simonds, P. H. Morgan, & U. S. Attorney, esqrs.

Marshal's return on notice.

Received June 6th, 1871, by the U. S. marshal, and on the same day, month, and year served copies of the within notice as follows, to wit:

On Lea, Finney & Miller, by delivering the same to H. C. Miller, a member of the firm, at No. 21 Commercial Place.

On L. E. Simons, personally, in U. S. court-room.

On P. H. Morgan, personally, at No. 184 Gravier street, in this city.

On Elmore & King, by delivering the same to W. W. King, at No. 36 Natchez st.

On U. S. att'y, by delivering the same to J. W. Gurley, ass't U. S. attorney, at his office in the U. S. custom-house.

New Orleans, June 6th, 1871.

(Signed) S. W. REED,
D'y U. S. Marshal.

564 *Agreement as to the testimony of A. C. Graham.—Filed June 6th, 1871.*

U. S. circuit court, fifth circuit & district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

It is agreed that all the testimony of A. C. Graham, taken under commission and offered in evidence in the suit of the Fourth National Bank of New York vs. The New Orleans and Carrollton R. R. Co. et al., being suit numbered 5359 upon the docket of this court, may be introduced in evidence in this suit without objection, except as to its legal effect.

N. Orleans, June 3d, 1871.

(Signed) J. D. ROUSE,
Solicitor for Complainant.

" LEA, FINNEY & MILLER,
For Def'ts, except G. T. B.

" L. E. SIMONDS,
Sol'r for N. O. & Car'n R. R. Co. & G. T. Beauregard.

Supplemental and amended answer of G. T. Beauregard.—Filed June 7th, 1871.

United States circuit court, district of Louisiana.

565 CHA'S CASE, RECEIVER 1ST NAT'L BANK of New Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

The supplemental and amended answer of G. T. Beauregard to plaintiff's bill of complaint says:

That he joins in and adopts as his own the supplemental & amended answer of the other defendants, filed by order of court on March 30th, 1871, and that he truly avers that all the facts alleged in said amended answer are true, and are adopted as part of this supplemental and amended answer as fully as if repeated here in totidem verbis.

Wherefore this defendant prays leave of the court to file this supplemental and amended answer, and that plaintiff's bill be dismissed, and for all proper decree in the premises, as prayed for in his original answer.

(Signed) L. E. SIMONDS,
Solicitor.

We consent that the above supplemental and amended answer be filed; and that in its form as above it have the same effect as if
566 there were set forth in it at length all the averments contained in the supplemental and amended answer of the N. O. & Carrollton Railroad Company and certain other defendants filed on March 30th, 1871.

(S'g'd) J. D. ROUSE,
Solicitor for Complainant.

G. T. Beauregard, being duly sworn, declares that all the matters and things contained in the foregoing answer, and in the said answer therein adopted as his own, which are stated upon the personal knowledge of affiant, is true, and those stated upon the information of others he believes to be true.

(Signed) G. T. BEAUREGARD, *Pres't.*

Sworn to and subscribed before me this 7th day of June, 1871.

[SEAL.] (Signed) W. L. EVANS,
Second Justice Peace.

567 *Note of Evidence.—Filed June 8th, 1871.*

United States circuit court, district of Louisiana.

CHA'S CASE, RECEIVER 1ST NAT'L BANK OF New Orleans, *vs.* G. T. BEAUREGARD ET AL. } 5931.

Complainant offered commission of Ch's Case, rec'r (transcribed on pages of this transcript), Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, and note of $40,000 (transcribed on pages 24 to 141, inclusive); also, bill of exchange marked "P" (on page 24), note and

protest marked "Q" (on page 568), note of Forbes marked "R" (on page 569), note of Deslonde marked "S" (on page 569), and note marked "T" (on page 570); also, notice of warranty in bankruptcy of T. P. May, marked "U" (on page 571.)

It is admitted that May filed his petition and was adjudged a bankrupt on 1st May, 1871.

Complainant offered testimony of L. Meig, W'm M. Perkins, D. B. Forbes, & P. Helm (on pages 501 to 551, in.); Louis Meig recalled (551 to 555, in.).

Complainant offered the testimony of Frank F. Case (555 to 562), & the 5 exhibits annexed (on pages 486 to 501, in.); also, that of Sterne Chittenden (on pages 305), deposition of A. C. Graham, taken
568 under commission in suit No. 5359 of this court (on pages 592 to 603, in.), and by-laws of 1st National Bank of New Orleans (on pages 576 to 592).

Elmore & King, solicitors for 4th National Bank of New York, offered Doc't A, No. 1 (on pages 572 to 576).

All the defendants, except 4th National Bank & T. P. May, offered power of attorney of A. C. Graham to May (on pages).

Defendants offered testimony of J. Hernandez, Geo. Binder, A. Bonneval, G. T. Beauregard, T. P. May, L. Meig, S. R. Proctor, Peter McBride, & the 19 exhibits referred to in above testimony; also 60 exhibits, marked from 1 to 60 (all transcribed on pages 343 to 471, inclusive), and testimony of officers of the Treasury marked "B^{37}" (on pages 311 to 326, in.).

Lea, Finney & Miller, on behalf of N. O. & C. R. R. Co., offer agreement B^3, subject to the objections of all parties (on page 603); also, account of T. P. May with 1st National Bank, marked "B^{47}" (on pages 336 to 342, in.).

Copy of notes marked "Q," "R," "S," & T." Filed June 8th, 1871 (original withdrawn), and offered in evidence June 8th, 1871).

U. S. circuit court, district of Louisiana.

CHA'S CASE, REC'R, &C., *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

569 (Copy.)

[U. S. int. rev. stamp, $20\frac{10}{100}$.]

$50,000.] NEW ORLEANS, *March 19th*, 1867.

Ninety days after date I promise to pay to the order of Tho's P. May fifty thousand dollars, value received, with interest at the rate of 8 per c't per annum from maturity until paid.

Payable at 1st Nat'l Bank of N. O.

M. T. STEELE.

No. . June 20.

(Endorsed:) T. P. May, annexed to protest.

(Copy of Forbes' note, m'k'd "R.")

$20,284.] NEW ORLEANS, *M'ch 18th*, 1867.

Sixty days after date I promise to pay to the order of Thomas P. May

twenty thousand two hundred & eighty-four $\frac{00}{100}$ dollars at the First National Bank of New Orleans. Value received.

D. B. FORBES.

No. . Due May 17–20.

(Endorsed:) T. P. May, 10^{05} U. S. int. rev. stamps on back.

(Copy of Deslonde note marked "S.")

$2,000.] NEW ORLEANS, *March 14th*, 1867.

Ninety days after date I promise to pay to Tho's P. May, or
570 order, two thousand dollars at the First National Bank. Value received.

E. A. DESLONDE.

No. . Due. .

(Endorsed:) T. P. May.

Protest and notice of protest is hereby waived on this note June 15, 1867.

T. P. MAY,
P'r E. A. DESLONDE.

(Copy of Deslonde note marked "T.")

$5,000.] NEW ORLEANS, *Nov'r 30th*, 1866.

On demand, after date, I promise to pay to Tho's P. May, or order, five thousand dollars, at First National Bank of New Orleans. Value received.

E. A. DESLONDE.

No. . Due .

(Endorsed:) T. P. May.

Demand notice & protest waived.

T. P. MAY,
P'r E. A. DESLONDE.

CLERK'S OFFICE.

I certify the foregoing to be true copies of the original notes on file, under date of 8th June, 1871, and withdrawn by complainant's attorney under agreement on file.

New Orleans, July 19th, 1871.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

571 *Notice of warranty in bankruptcy of T. P. May, marked "U." Filed and offered in evidence by compl't June 8th*, 1871.

U. S. circuit court, dist. of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

OFFICE OF UNITED STATES MARSHAL,
DISTRICT OF LOUISIANA,
New Orleans, May 3, 1871.

To CHA'S CASE,
Receiver, &c., of New Orleans, State of L'a, creditor of Thomas P. May, bankrupt.—No. 1127:

You are hereby notified that a warrant in bankruptcy has been issued out of the district court of the United States for the district of Louisi-

ana against the estate of Thomas P. May, of S't John the Baptist Parish, adjudged a bankrupt upon his own petition; that the payment of any debts and delivery of any property belonging to such bankrupt to him or for his use, and the transfer of any property by him, are forbidden by law; that a meeting of the creditors of said bankrupt, to wit:

572 Names of creditors.	Residence.	Amount.
The United States	District attorney, custom-house	Unknown.
" do. do. for taxes 1866	Do. do.	Unknown.
do. do.	Do. do.	$1,080,000 00
State of Louisiana, taxes 1866	Att'y-gen'l State, New Orleans	Unknown.
Do. do.	State treasurer, New Orleans	Unknown.
United States, by judgment on bond of L. B. Collins.	U. S. attorney, New Orleans	25,000 00
J. B. Walton & Deslonde, auctioneers	New Orleans	Unknown.
Bloomfield & Steel	Do.	Unknown.
Tho's Mulligan	Do.	Unknown.
Cha's Case, rec'r 1st Nat'l B'k, draft on A.C. Graham	Do.	125,000 00
" " " Steel's note	Do.	50,000 00
" " " D. B. Forbes' note	Do.	20,000 00
" " " E. A. Deslonde's "	Do.	5,000 00
" " " E. A. Delonde's note	Do.	2,000 00
" " " A. C. Graham's draft	Do.	100,000 00

To prove their debts and choose one or more assignees of the estate, will be held at a court of bankruptcy to be holden on the tenth day of May, A. D. 1871, at 12 o'clock m., at No. 126 Exchange Alley, before Donatien Augustin, register.

(Signed) S. B. PACKARD,
U. S. Marshal, Messenger,
Per JAMES E. AYER, *Deputy.*

Document A, No. 1, offered by 4th National Bank of New York, & filed June 8th, 1871.

573 No. 442.] RECEIVER'S OFFICE,
FIRST NATIONAL BANK OF NEW ORLEANS,
New Orleans, Dec'r 8th, 1869.

This is to certify that Billopp Seamen, cashier of the Fourth National Bank of the city of New York, has this day made legal and satisfactory proof that he is a creditor of the First National Bank of New Orleans to the amount of fifty-five thousand four hundred & sixty dollars and nineteen cents upon the following claim, to wit:

For balance due the said Fourth National Bank on an account rendered to Nov. 12th, 1868, and attached to the affadavit of Billopp Seaman, dated November 30th, 1869, and with me this day filed. But the amount certified due, as aforesaid, is allowed as a claim against said First National Bank, subject to any offsets or credits that have accrued or may accrue from any of the items or claims specified in schedule B, also attached to said affidavit, a copy of which said schedule is hereto attached.

This certificate is valid only to authorize the bona fide holders thereof to receive such pro rata dividends as may be declared by the Comptroller of the Currency in favor of the creditors of this bank.

574 No assignment of this claim or any portion thereof will be recognized in the payment of dividends unless notice of such assignment is given to the receiver and entered upon his books before such dividends are declared.

[SEAL.] (Signed) C. CASE,
Receiver of First National Bank of New Orleans.

Copy of schedule B attached to certificate No. 442, dated Dec. 8th, 1869.

a. The Fourth National Bank of the city of New York received from the First National Bank of New Orleans and has collected the following drafts not credited in above account:

1st May, 1867.—John Christian Lindauer, gold, $440.15. The proceeds of this draft were claimed by and have been recovered in a suit by Lindauer from the Fourth National Bank, and on appeal is now pending.

2d May, 1867.—John B. Dod, $821.91. The proceeds of this draft are claimed by Dod, and a suit therefor is now pending.

3d May, 1867.—R. L. Macmurdo and Francis Rawle, $8,500. Of
575 this amount & interest the Fourth National Bank received April 14th, 1868, the sum of $9,342.40, but MacMurdo & Rawle claimed the same and have recovered judgment therefor, and an appeal is now pending.

b. The Fourth National Bank also received from the agent in New York of the First National Bank of New Orleans—

May, 1867.—Five drafts upon the Bank of Liverpool, together £10,000. These have not been collected, but an action in chancery in England is now pending to collect the same.

c. The Fourth National Bank also held coupons of the city of New Orleans, paid by it on account of the First National Bank of New Orleans, to the extent of $15,720, nominal value, which the said Fourth National Bank claim to hold as security for the sum of $15,505.67 paid by it up to 16th May, 1867, on account of said coupons.

The Fourth National Bank has also received from A. C. Graham to secure his individual guaranty made to said bank prior to May, 1867, to protect it against all overdrafts by the First National Bank of New Orleans, a transfer of the following property:

1. His interest in the New Orleans & Carrollton Railroad Company or the lease thereof.

576 2d. His interest in a certain plantation in the State of Louisiana, upon the Mississippi River, above 27 miles above the city of New Orleans, known as the "Payne Place."

3d. His individual balance of deposit with the said Fourth National Bank on the 16th May, 1867, amounting to $25,000.

From or out of the above nothing has been received by the Fourth National Bank except the said sum of $25,000, which the Fourth National Bank desires to credit as may be determined to be in accordance with the respective rights of all parties.

(Signed) BILLOPP SEAMEN.
(Signed) ELI BONIN,
Notary Public, N. Y. City & Co.

By-laws of the First National Bank of New Orleans, offered in evidence by complainant, and filed June 8th, 1871.

United States circuit court, district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW Orleans, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

577 BY-LAWS, ETC.

Elections.

SECTION 1. The regular annual meetings of the stockholders of this

bank for the election of directors shall be held at its banking-house on the second Tuesday of January of each year, between the hours of ten and four of said day.

Thirty days' notice of the time and object of such meeting shall be given by the cashier of this bank, by publication in such daily papers as the board of directors may indicate. And it shall be the duty of the board of directors, within one month previous to the time of said election, to appoint three stockholders to be judges of said election, who shall hold and conduct the same, and who shall, after the election has been held, certify, under their hands, to the cashier of this bank the result thereof and the names of the directors elect.

SEC. 2. The cashier, upon receiving the certificates of the judges of the election as aforesaid, shall cause the same to be recorded upon the minute-book of the bank, and shall notify the directors-elect of their election, and of the time at which they are required to meet
578 at the banking-house of this bank for the purpose of organizing a new board. If at the time fixed for the meeting of the directors elect there should not be a quorum present, the members present may adjourn from time to time until a quorum is obtained.

SEC. 3. If for any cause the annual election of directors should not be held on the second Tuesday of January, the board shall order the election to be held on some other day, of which special election notice shall be given, judges appointed, and returns made, and directors-elect notified, according to the requirements and provisions of section 2 of these by-laws.

The board shall have power to call a general meeting of the stockholders at any time they may deem proper, giving thirty days' notice of the time and place and objects of such meeting in the two newspapers.

Officers.

SEC. 4. The officers of this bank shall be a president, cashier, teller, bookkeeper, and such other officers as may be from time to time required for the prompt and orderly transaction of its business.

579 SEC. 5. The president shall hold his office (unless he resign or become disqualified or be removed) for the current year for which the board, of which he shall be a member, was elected.

In case a vacancy in the board of directors or in the office of president shall occur during any current year, it shall be filled by the board.

SEC. 6. The cashier and the subordinate officers shall be appointed to hold their offices respectively during the pleasure of the board.

SEC. 7. The president of this bank shall be responsible for all such sums of money and property of every kind as may be entrusted to his care, or placed in his hands by the board of directors or by the cashier, and shall give bond in the penalty of $50,000, with security, to be approved by the board, conditioned for the faithful discharge of his duties as such president, and that he will faithfully apply and account for all sums of money and other property of the bank that may come into his hands as such president, and pay over and deliver the same to the order of the board of directors, or to any other person or persons authorized to demand and receive the same.

580 SEC. 8. The cashier of this bank shall be responsible for all the moneys, funds, and valuables of the bank, and shall give bond, with security, to be approved by the board, in the penal sum of $50,000, conditioned for the faithful and honest discharge of the duties as such cashier, and that he will faithfully apply and account for all such moneys

Copy of schedule B attached to certificate No. 442, dated Dec. 8th, 1869.

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(Signed) BILLOPP SEAMEN.
(Signed) ELI BONIN,
Notary Public, N. Y. City & Co.

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577 BY-LAWS, ETC.

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SEC. 2. The cashier, upon receiving the certificates of the judges of the election as aforesaid, shall cause the same to be recorded upon the minute-book of the bank, and shall notify the directors-elect of their election, and of the time at which they are required to meet
578 at the banking-house of this bank for the purpose of organizing a new board. If at the time fixed for the meeting of the directors elect there should not be a quorum present, the members present may adjourn from time to time until a quorum is obtained.

SEC. 3. If for any cause the annual election of directors should not be held on the second Tuesday of January, the board shall order the election to be held on some other day, of which special election notice shall be given, judges appointed, and returns made, and directors-elect notified, according to the requirements and provisions of section 2 of these by-laws.

The board shall have power to call a general meeting of the stockholders at any time they may deem proper, giving thirty days' notice of the time and place and objects of such meeting in the two newspapers.

Officers.

SEC. 4. The officers of this bank shall be a president, cashier, teller, bookkeeper, and such other officers as may be from time to time required for the prompt and orderly transaction of its business.

579 SEC. 5. The president shall hold his office (unless he resign or become disqualified or be removed) for the current year for which the board, of which he shall be a member, was elected.

In case a vacancy in the board of directors or in the office of president shall occur during any current year, it shall be filled by the board.

SEC. 6. The cashier and the subordinate officers shall be appointed to hold their offices respectively during the pleasure of the board.

SEC. 7. The president of this bank shall be responsible for all such sums of money and property of every kind as may be entrusted to his care, or placed in his hands by the board of directors or by the cashier, and shall give bond in the penalty of $50,000, with security, to be approved by the board, conditioned for the faithful discharge of his duties as such president, and that he will faithfully apply and account for all sums of money and other property of the bank that may come into his hands as such president, and pay over and deliver the same to the order of the board of directors, or to any other person or persons authorized to demand and receive the same.

580 SEC. 8. The cashier of this bank shall be responsible for all the moneys, funds, and valuables of the bank, and shall give bond, with security, to be approved by the board, in the penal sum of $50,000, conditioned for the faithful and honest discharge of the duties as such cashier, and that he will faithfully apply and account for all such moneys

funds, and valuables, and deliver the same on proper demand to the order of the board of directors of this bank, or to the person or persons authorized to receive them.

It shall be the duty of the cashier, appointed during the pleasure of the board, to countersign, at the bank, all bills or notes to be signed by the president, or by order of the board; carefully to observe the conduct of all persons employed under him, and report to the board such instances of neglect, incapacity, or bad conduct as he may discover in any of them; daily to examine the settlement of the cash accounts of the bank; to take charge of the cash, and whenever the actual amount materially disagrees with the balance of the cash account, report the same to the president and directors without delay; to attend all meetings
581 of the board; keep a fair and regular record of its proceedings; give such information to the board as may be required; consult with committees when requested on subjects referred by the board, and also to perform such other services as may be required of him by the board.

SEC. 9. The teller shall be responsible for all such sums of money, property, and funds of every description as may from time to time be placed in his hands by the cashier, or otherwise come into his possession as teller, and shall give bond, with security to be approved by the board, in the penalty of $20,000, conditioned for the honest and faithful discharge of his duties as teller, and that he will faithfully apply, account for, and pay over all moneys, property, and funds of every description that may come into his hands by virtue of his office as teller, to the order of the board of directors aforesaid, or to such person or persons as may be authorized to demand and receive the same.

SEC. 10. Insolvency on the part of a director vacates his seat in the board; and the evidence of a director's name remaining for a period of ten days under protest in any bank in the city of New Orleans
582 will be considered by the board as conclusive in regard to his insolvency.

SEC. 11. The notary of the bank shall give bond for $10,000, with security to be approved by the board, for the faithful discharge of his duties as such notary; and all other officers and employees of the bank shall give like bonds for $5,000 each, to which shall be added an affirmation, the tenor of which shall be that they will faithfully and diligently perform their respective duties; that they will keep inviolate all information connected with the operations of the bank; that they will give immediate information to the cashier of any and all delinquencies of which they may be cognizant of any clerk or clerks; and that they will in every particular act for the best interests of the institution.

SEC. 12. In case of the absence of the president, from sickness or any other cause, the board may elect one of their number as president pro tem., with full power to act in his stead.

Seal.

SEC. 13. The following is a description of the seal adopted by the board of this bank: The arms of the State of Louisiana, with motto of the State, the whole surmounted by the title of the bank.

583 *Conveyance of real estate.*

SEC. 14. All transfers and conveyances of real estate shall be made by the bank, and under the seal thereof, in accordance with the orders of the board, and shall be signed by the president or cashier.

Increase of stock.

SEC. 15. Whenever an increase of stock shall be determined upon, in accordance with the provisions of the articles of association of this bank, it shall be the duty of the board to notify all the stockholders of the same, and to cause a subscription to be opened for such increase of capital. In the increase of capital each stockholder shall have the privilege of subscribing for such number of shares of the new stock as he may be entitled to subscribe for, according to his existing stock in the bank. If any stockholder should fail to subscribe for the amount to which he may be entitled, the board of directors may determine what disposition shall be made of the privilege of subscribing for the unsubscribed stock.

SEC. 16. The bank shall be kept open for the transaction of business from 10 o'clock a. m. until 3 o'clock p. m., and such other time or times as the pleasure of board may determine, every day in the
584 year, except Sundays, Christmas, Good Friday, fourth of July, first & eighth of January, and such other days and hours as may be excepted by a special order of the board.

SEC. 17. The books and accounts of the bank shall be regularly balanced on the fourth Mondays of May and November, when the half-yearly dividends shall be declared and published in at least two of the public newspapers in the city of New Orleans, and shall be payable on or after the first Monday in June and first Monday in December to the stockholders or their lawful representatives. The said settlement shall be examined and certified by a committee to be appointed for that purpose. The semi-annual, quarterly, and monthly reports shall be made according to the provisions of sections 24 and 45 of the act under which this bank is organized.

SEC. 18. The bank shall take charge of the cash of all such persons as shall choose to place it there free of expense, and shall keep it subject to the order of the depositor, payable at sight; and shall also receive special deposits of ingots of gold and bars of silver for safe keeping, at the risk of the depositor.

585 SEC. 19. The bank shall receive and pay all specie coins (except Spanish doubloons) according to the rates and value that have been, or shall hereafter be, established by the Congress of the United States.

SEC. 20. There shall be two discount days in each week (Tuesdays and Fridays), and all bills and notes offered for discount shall be delivered to the bank on the days next preceeding the days of discount (Mondays and Thursdays).

SEC. 21. It shall be the duty of the cashier to lay before the board at every discount day a general statement of the accounts of the bank.

Examinations.

SEC. 22. There shall be appointed by the board every month a committee whose duty it shall be to examine into the affairs of the bank, to count its cash, and compare its assets and liabilities with the balances on the general ledger for the purpose of ascertaining whether or not the books are correctly kept and the condition of the bank corresponds therewith, and whether or not the bank is in a sound and solvent condition; the result of which examination shall be reported to the board at their next regular meeting.

SEC. 23. No director, without special authority, shall be per-
586 mitted to inspect the cash account of any person with this bank.

SEC. 24. On each application for discount every director who may be present shall be held to give his opinion for or against the same, and no discount shall be made without the consent of three-fourths of the directors present, and all notes and bills discounted shall be entered in a book, to be called the credit book, in such manner as to discover to the board at one view on each discount day the amount which any person is discounter or is indebted to the bank, either as payer or as endorser.

SEC. 25. On every discount day the name of every person who shall have overdrawn the bank since the last discount day shall be reported to the board, and in no instance will this bank give a release or discharge to any debtor where the debt arises from overdraft; and every officer who shall knowingly suffer an overdraft to be made on the bank without communicating it to the president or cashier shall be dismissed from the service of the bank.

SEC. 26. If any bill or note belonging to this corporation shall not be paid before the shutting of the bank on the last day of grace,
587 such bill or note shall be forthwith protested; and while such bill or note remains unpaid no discount or accom'odation shall be granted to any drawer, *exceptor*, or endorser of the same. All bills and notes for collection must be lodged in the bank ten days previous to their maturity.

SEC. 27. All notes discounted by the bank shall be charged to the account of the payer or payers when due.

SEC. 28. All notes discounted to meet the payment of any note or bill due to the bank shall not be drawn for nor applied to any other purpose whatever.

SEC. 29. All bills and notes offered for discount in the First National Bank of New Orleans drawn or endorsed by persons living out of the limits of the city of New Orleans shall be made payable at some bank in the said city.

SEC. 30. Every person who opens an account and transacts business with this bank shall subscribe his name in a book, to be kept for that purpose, to be called the book of signatures; and all the persons who compose any house keeping an account with this bank shall sub-
588 scribe their names and the signature of the firm in this book.

SEC. 31. No clerk or servant of this bank shall keep an account therein, but shall receive his salary monthly from the cashier.

Contracts.

SEC. 32. All contracts, checks, drafts, etc., shall be signed by the president or cashier.

Meetings.

SEC. 33. The regular meetings of the board shall be held on Tuesdays and Fridays, at 10 o'clock a. m. Special meetings may be called by the president or cashier.

Quorum.

SEC. 34. Two-thirds of the directors, including the president, shall be a quorum to do business.

SEC. 35. The proceedings of the board of directors, when conducting

their business as a deliberative body, shall be governed by the following articles:

1. When the president takes the chair, the members shall take their seats.

2. The minutes of the preceding meeting shall be read before the board proceeds to any other business, and no debate shall be admitted nor question taken at such reading, except as to errors and inaccuracies.

The state of the bank shall then be read, and the discounts
589 settled.

3. The president shall be the judge of order, and his decisions shall be immediately submitted to, unless two members require an appeal to the board. He shall name all committees, unless herein *ordered* otherwise provided, or unless the board shall otherwise determine; and he shall call special meetings of the board whenever in his opinion the business may require it, or on the request of three members of the board.

4. Every member presenting a paper to the chair shall first state its general purport; and every member who shall make a motion, or offer a resolution, or speak on any subject under discussion, shall rise and address the board.

5. No debate shall be entered into on any motion or resolution until it shall be stated from the chair, and all motions shall, if requested by the president or by two members, be reduced to writing; and no member shall speak more than twice upon any one question without leave of the president.

6. While a resolution is under consideration no motion shall be made, except to amend, divide, commit, or postpone it; but it shall be
590 in order at any time, on the call of three members, to take the previous question, which shall be, "Will the board at this time act on the subject?" and if it shall be decided in the affirmative the debate may be continued. A motion to adjourn shall always be in order, but shall be decided without debate.

7. A member may call for the division of a question or resolution where the sense will admit of it; but no amendment which tends to destroy the general sense of the clause of a resolution shall be admitted.

8. If business of different kinds shall be called for at the same time by different members, the president will judge and give preference accordingly.

9. The yeas and nays shall be taken on any question if called for by one member previous to the decision on such question, but no motion for reconsideration shall be permitted unless made and seconded by members who were in the majority on the original question.

10. At the request of any two of the board the names of the members who make and second a motion shall be entered on the minutes.

SEC. 36. It shall not be allowed either to the president and di-
591 rectors, or to any of the officers of the bank, to disclose her confidential affairs, or the opinions and manner of voting of any of the directors: Wherefore, every director and officer of the bank, on entering in office, shall be considered as having pledged his honor to observe faithfully this rule, as being implied and understood in this oath which they are required to take by the fourteenth section of the *of act* incorporation; and it shall be the duty of the president and cashier to give cognizance to this by-law, the one to the members of the board and the other to the officers of the bank, on their respective installations in office.

Transfers of stock.

SEC. 37. All transfers of stock of this institution shall be made upon a book, to be kept in the bank, to be called the transfer book, and all transfers may be made by the proprietor or his lawful attorney; the certificate of stock to be surrendered at the time the transfer is made.

592 *Deposition of A. C. Graham, taken under commission in suit No. 5359 of this court, and offered in evidence by complainant in suit* 5931, *June 8th*, 1871.

U. S. circuit court.

FOURTH NATIONAL BANK OF THE CITY OF NEW York
vs.
THE NEW ORLEANS & CARROLLTON RAILROAD Company & als. } No. 5359.

Interrogatories to be exhibited to A. C. Graham, P. C. Calhoun, and Philip Seamen, witnesses residing in New York, in the suit of 4th National Bank of New York vs. New Orleans and Carrollton Railroad Company & als., pending in the circuit court of the United States in the district of Louisiana.

1st. You have stated on your former examinations in this case that you had paid the money specified in the contract between G. T. Beauregard, T. P. May, and yourself for the lease of the said railroad and appurtenances. State with exactness the sums of money paid by you, to whom they were paid, the date of every payment, the form of payment, and set forth all the receipts, acknowledgements, and vouchers you have
593 of the same from either of your partners.

2d. You have stated in your former depositions that you made a guarantee to the plaintiff of certain bills drawn by the First National Bank of New Orleans upon the 4th National Bank of New York. Set forth, in your answer, the exact terms of that guarantee, when was it made, to whom addressed, and what was the cause or motive for making it. In what manner were you concerned or interested in the bills drawn, and who required or obtained the guarantee? Attach a copy to your answer. Set forth in your answer an exact statement of all the bills comprehended in it by dates, amounts, and parties to the same.

3d. You have stated that the bills were drawn and have been protested which were given for said drafts; describe all of such, by dates, amounts, and parties, that were given by you on account of any bills comprehended by your guarantee to the 4th National Bank.

4th. What is your debt to the 4th National Bank, and upon what account was that debt made?

5th. When did you hear of the failure of T. P. May? Did he in
594 any letter inform you of the probability of his failure or make any request of you relative to the lease? Attach to your answer all letters of T. P. May, between the dates of the 1st of March, 1867, and the 1st of June, 1867, and all telegrams to you that in any manner refer to or relate to said lease. Do you answer that the letters and telegrams to you contain all communications to you by said May relative to the same?

6th. Do you know anything of bills drawn upon you by said May for

seventy-five thousand dollars, which were entered on the books of the First National Bank of New Orleans, but which were never forwarded or which cannot be found? Attach to your answer to this interrogatory all letters or communications to you on the subject.

7th. What moneys, notes, drafts, or property have you either of said T. P. May or of the First National Bank? What is your debt to either, and when was it contracted; how?

8th. Is it not a fact that the said May took conveyances for property in your name but for himself? Was not the lease of the New Orleans and Carrollton Railroad Co. taken in this manner?

595 9th. Were you at any time a bona fide owner of the lease or a bona fide contractor in said contract; but were you not merely an instrument of said May, and was not your name employed for his use?

(Signed) P. H. MORGAN,
U. S. Att'y.

CLERK'S OFFICE.

A true copy of the original on file.
New Orleans, February 18th, 1869.
(Signed) D. URBAN, *Clerk*,
By F. B. VINOT, *D'y Clerk.*

Testimony taken under the foregoing commission.

Circuit court of the United States for the fifth judicial district.

FOURTH NATIONAL BANK OF THE CITY OF NEW York
vs.
NEW ORLEANS AND CARROLLTON RAILROAD Company et al. } No. 5359.

STATE OF NEW YORK,
City and County of New York, ss:

Examination of A. C. Graham, P. C. Calhoun, and Billopp (Philip) Seaman, in answer to the interrogatories annexed to a commission from the above circuit court of the United States, dated the 18th day of February, 1869, and addressed to Charles T. Middlebrook, commissioner.

On this 10th day of March, 1869, before me came A. C. Graham, P. C. Calhoun, and Billopp Seaman, who, being severally sworn, did depose and say:

596 The said A. C. Graham answers to the interrogatories as follows, viz:

To the first interrogatory: On the 4th day of May, 1866, I paid $20,000 to G. T. Beauregard, lessee, by checks to his order upon First National Bank of New Orleans, a copy of which is hereto annexed marked exhibit I. On the 8th day of May, 1866, $20,000, by my check upon same bank, drawn by my attorney, T. P. May, when I was absent from New Orleans, for $30,000, which included the said $20,000, a copy of which check is hereto annexed marked exhibit II; on the 9th of June, 1866, $20,000, by my check drawn upon same bank by my attorney, T. P. May, being still absent from New Orleans, to the order of G. T. Beauregard, lessee, a copy of which check is hereto annexed marked exhibit

III; on the 10th of July, 1866, $20,000, by my check to the order of G. T. Beauregard, lessee, upon same bank; a copy of which is hereto annexed marked exhibit IV. In addition to the above sums subsequent to the date of the last check, T. P. May, as this deponent's attorney, in various ways, by checks and drafts, applied upon the contract mentioned in this 1st interrogatory $50,000 and upwards, the particulars of which I am unable to give, never having received from M'r May any ac-
597 count or information respecting his action or payments as my attorney under power mentioned, except that in an account furnished by said Beauregard under date March, 1867, of the copartnership transactions between said Beauregard, May, and myself, the said Beauregard credited this deponent with funds furnished to said copartnership with the sum of $131,474.90.

To second interrogatory: The only guarantees which I ever gave to the Fourth National Bank of New York for any purpose or object whatever were given on the 27th of April, 1867, and on the 7th of May, 1867, true copies of which are hereto annexed marked exhibit V & VI; that the object of giving said guarantees, to whom it was given, and the cause of it, appear from the terms thereof, that there were very extensive dealings and transactions direct between the 1st National Bank of New Orleans and the 4th National Bank of New York, all of which were covered by said guarantees, and it is impossible for me to give the particulars thereof from any documents, accounts, or vouchers in my possession; that I had no interest in any bill or bills covered by said guarantees; that I gave the guarantees at the request of the president
598 of the 4th National Bank, and because this deponent was the agent in New York of the 1st National Bank of New Orleans, and wished to sustain its credit.

To third interrogatory: That this deponent is unable to answer this interrogatory, not knowing what drafts or bills are therein referred to.

To fourth interrogatory: This deponent is not indebted to the 4th National Bank in any amount whatever otherwise than contingently upon the guarantees mentioned, nor was he so indebted at the time f the failure of the 1st National Bank of New Orleans; on the contrary thereof this deponent, as a depositor, had in said 4th National Bank a balance in his favor of $25,000 and upwards, which this deponent consented might remain and be held by the said 4th National Bank of New York to secure it for any balance that might be due to it from the 1st National Bank of New Orleans.

To fifth interrogatory: On or about the 13th of May, 1867, I heard of the failure of T. P. May. About this time I had information that said May was greatly pressed for money, but I have no recollection of being informed of the probability of his failure; that said May did
599 not make any request to me relative to the lease referred to in this interrogatory. I have no recollection or belief of receiving any letter or telegrams from said May between the 1st of March, 1867, and the 1st of June, 1867, referring to or relating to said lease.

To sixth interrogatory: I have no knowledge of any bills drawn on me for $75,000, and can make no other answer to this interrogatory.

To seventh interrogatory: I have no monies, notes, drafts, or property, either of T. P. May or the 1st National Bank of New Orleans. I am not indebted to said bank; but on the settlement of the claims and demands of said bank against me, I joined with my brother, Malcolm Graham, in giving four notes to the receiver of said bank, amounting in the aggregate to nineteen thousand dollars, and there is an unsett'ed account between me and said May, embracing many transactions.

and which accounts cannot be closed until said May gives a statement of his action under my power of attorney to him, and my belief is that I owe him nothing.

To eighth interrogatory: T. P. May did not take a conveyance
600 in my name for himself of the lease of the New Orleans and Carrollton Railroad Company, nor do I know of his having taken a conveyance of any property in my name but for himself.

To ninth interrogatory. I was a bona fide owner of one half of the lease mentioned in this interrogatory, and a bona fide party to the articles of copartnership between me, Beauregard, and May respecting said lease.

(Signed) A. C. GRAHAM.

Sworn to before me this 10th day of March, 1869.

(Signed) CHA'S T. MIDDLEBROOK,
Commissioner.

Testimony of A. C. Graham, taken under commission in suit No. 5359 of this court.—Filed & offered in evidence by complainant June 8th, 1871.

Circuit court of the United States, district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS,
vs.
G. T. BEAUREGARD ET AL.

601 Interrogatory 2d. Were you the bona fide owner of the said interest in the New Orleans and Carrollton Railroad Company, which you transferred to the bank?

To second interrogatory witness deposes, I was.

(Signed) A. C. GRAHAM.

Subscribed and sworn to before me this 3d day of August, 1868.

(Signed) CHARLES T. MIDDLEBROOK,
Commissioner.

United States circuit court, fifth circuit, and district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true extract from the original filed with and annexed to a commission issued on behalf of complainants on June 30th, 1868, in a cause entitled Fourth National Bank of New York vs. New Orleans and Carrollton Railroad Co. & als., No. 5359 of the docket of said court.

New Orleans, June 8th, 1871.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Interrogatories propounded to Augustus C. Graham, New York.

1st. Please state whether the interest standing in your name in the New Orleans and Carrollton Railroad Company at the time it
602 was conveyed by you to the Fourth National Bank of New York was not really belonging to Thomas P. May.

State whether you paid any portion of the monies requisite to entitle

you to said interest; and, if yea, state from what fund the said monies were drawn to make the required payments.

(Signed) CYPRIEN DUFOUR,
Solicitor for Defendants.

Augustus C. Graham, being duly sworn, says, in answer to the interrogatory propounded to him in the annexed commission:

The said interest belonged to me, and not to Thomas P. May. I did pay monies that entitled me to said interest. The monies so paid were my own private funds.

(Signed) A. C. GRAHAM.
(Signed) JAMES H. FAY,
Commissioner, &c.

United States circuit court, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I certify the foregoing to be a true extract from the original
603 filed with and annexed to a commission issued on behalf of defendants on 24th July, 1868, in a cause entitled Fourth National Bank of New York vs. New Orleans and Carrollton Railroad Co. & als., No. 5359 of the docket of said court.

New Orleans, June 7th, 1871.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Agreement marked "B³."—Filed and offered in evidence in behalf of N. O. & Carrollton R. R. Co.—June 8th, 1871.

U. S. circuit court, district of Louisiana.

CHA'S CASE, REC'R 1ST NAT'L BANK OF NEW ORLEANS, *vs.* G. T. BEAUREGARD ET AL. } No. 5931.

It is admitted that the transcript from the books of the Treasury, certified by the Register and authenticated according to law, would show an indebtedness of Thomas P. May, as assistant treasurer of the United States, on the 16th May, 1867, of one million and seventy-six thousand seven hundred and ninety-two $\frac{29}{100}$ dollars, and that this shall have effect the same as if said transcript was produced.

(Signed) J. D. ROUSE,
Sol'r for Compl't.

604 *Hearing and continuance of case.—Extract from the minutes. June 8th, 1871.*

United States circuit court, district of Louisiana. April term, 1871.

NEW ORLEANS, *Thursday, June 8th*, 1871.

Court met pursuant to adjournment. Present, Hon. Joseph P. Bradley, ass'e justice of the Supreme Court of the United States.

CHA'S CASE, REC'R OF THE 1ST NAT'L BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

This cause was called for trial.

J. D. Rouse and P. H. Morgan for complainant.

L. E. Simonds, Elmore & King, U. S. att'y; J. A. Campbell, Lea, Finney, and Miller, for defendants.

And after hearing the pleadings, evidence, & argument, the cause is continued till to-morrow at 11 a. m.

Hearing and submission of cause.—Extract from the minutes. June 9th, 1871.

U. S. circuit court.

CHA'S CASE, REC'R OF THE 1ST NATIONAL BANK of N. O.,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

605 This cause was resumed, and after hearing further argument the court took time to advise.

Decree from judgment book.

Circuit court of the United States, 5th circuit *circuit* & district of L'a. April term, 1871.

NEW ORLEANS, *Wednesday, June* 14, 1871.

Court met pursuant to adjournment. Present, honorable J. P. Bradley, associate justice of the Supreme Court of the U. S.

CHA'S CASE, REC'R OF THE FIRST NATIONAL Bank of New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

For reasons orally assigned by the court it is ordered, adjudged, and decreed that there be judgment for the defendants dismissing complainant's bill wth costs.

Decree rendered June 14th, 1871. Decree signed June 15th, 1871.
(Signed) JOSEPH P. BRADLEY,
Asso. Justice Sup. Court U. S.

Commission of F. F. Case as receiver of the First National Bank of New Orleans, vice Charles Case, resigned.—Filed June 3rd, 1876.

606 United States circuit court, district of Louisiana.

CASE, RECEIVER OF FIRST NATIONAL BANK of New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

TREASURY DEPARTMENT,
OFFICE COMP'R CURRENCY,
July 8th, 1874.

Whereas Charles Case was duly appointed and commissioned receiver

of the First National Bank of New Orleans, in the State of Louisiana, on the 20th day of May, 1867, and whereas said Charles Case proposes to resign his commission as receiver of said bank, leaving the said receivership vacant:

Now, therefore, be it known that I, John Jay Knox, Comptroller of the Currency, do hereby appoint Frank F. Case to be receiver of the First National Bank of New Orleans, to take effect upon the resignation of said Charles Case, with all the powers, duties, and responsibilities given to or imposed upon a receiver, under the provisions of the act entitled "An act to provide a national currency, secured by a
607 pledge of United States bonds and to provide for the circulation and redemption thereof," approved June 3rd, 1864.

In witness whereof I have hereunto subscribed my name and have caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, the day and year first above written.

[SEAL.] (Signed) JOHN JAY KNOX,
Comptroller of the Currency.

Appeal and order.—Filed June 3rd, 1876.

United States circuit court, district of Louisiana.

CASE, RECEIVER FIRST NATIONAL BANK OF New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

To the honorable the Supreme Court of the United States:

The appeal of the First National Bank of New Orleans respectfully showeth:

That heretofore the said complainant, the First National Bank of New Orleans, by Cha's Case, the receiver thereof, filed its bill in
608 said circuit court against the defendants, Gustave T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, Alexander Bonneval, G. W. Binder, the New Orleans & Carrollton Railroad Company, and the Fourth National Bank of New York, and the said defendants answered said bill; general replications to said answers were filed by the complainant, and proof taken and filed in the record.

That upon the 14th day of June, 1871, a final decree was made and pronounced in the cause, whereby it was in substance adjudged and decreed that said complainant's bill be dismissed, and it was dismissed accordingly.

And afterwards the said Charles Case having by his resignation ceased to be such receiver of said bank, Frank F. Case was duly appointed by the Comptroller of the Currency in his place and stead as such receiver, as appears by a copy of his appointment now on file in the office of the clerk of said circuit court.

Wherefore the said complainant, by said Frank F. Case, receiver as aforesaid, appeals from the whole of said decree of said circuit
609 court of the United States, and respectfully prays that the decree of the said circuit court and the bill, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay; and that said Supreme Court will proceed to hear the said cause anew; and that said decree of the circuit court, and every part thereof, may be reversed, and

a decree made in conformity with the prayer of said bill, and granting the relief asked by complainant with costs, or such other decree as the said Supreme Court shall seem just.

(Signed) J. D. ROUSE.
Solicitor for Appellant.

Order.

Let the appeal be granted in this cause as above prayed for, returnable according to law upon the complainant giving bond with solvent surety in the sum of five hundred dollars.

New Orleans, June 3d, 1876.

(Signed) W. B. WOODS, *Judge.*

610 *Bond for appeal.—Filed June 6th, 1876.*

United States circuit court for fifth circuit and district of Louisiana.

CASE, RECEIVER OF THE FIRST NATIONAL Bank of New Orleans,
vs.
G. T. BEAUREGARD ET AL. } No. 5931.

Know all men by these presents that we, the First National Bank of New Orleans, herein represented by Frank F. Case, receiver thereof, and James W. Fee, of New Orleans, are held and firmly bound unto G. T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, Alexander Bonneval, George Binder, the New Orleans and Carrollton Railroad Company, and the Fourth National Bank of New York, in the sum of five hundred dollars, to be paid to the said G. T. Beauregard, Thomas P. May, Augustus C. Graham, Joseph Hernandez, Alexander Bonneval, George Binder, the New Orleans and Carrollton Railroad Company, and the Fourth National Bank of New York, their executors, or administrators, or assigns. To which payment, well and truly
611 to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, dated this 3rd day of June, 1876.

Whereas, the above-named First National Bank of New Orleans, by said Frank F. Case, receiver thereof, hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the fifth circuit and district of Louisiana:

Now, therefore, the condition of this obligation is such that if the above-named First National Bank of New Orleans shall prosecute its said appeal to effect, and answer all costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

FIRST NATIONAL BANK OF NEW ORLEANS,
By F. F. CASE, *Receiver.* [L. S.]
JAS. W. FEE. [L. S.]

Sealed and delivered in presence of—
J. D. ROUSE.
ANDREW J. MURPHY.

Approved.

EDWARD C. BILLINGS, *Judge.*

612 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 611 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Frank F. Case, receiver of the First National Bank of New Orleans, versus G. T. Beauregard and others, No. 5931 of the docket of said court.

Witness my hand and the seal of said court at the city of New Orleans this 11th day of September, A. D. 1876.

(Fifteen words erased, null before signing.)

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, William B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans in said district this 11th day of September, A. D. 1876.

W. B. WOODS, *Judge.*

613 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to George W. Binder, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank F. Case, receiver thereof, is complainant and appellant and you and others are defendants and appellees, to show cause, it any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS, *Judge.*

(Indorsed:) United States circuit court. No. 5931. F. F. Case, receiver 1st Nat'l Bank of N. O., vs. G. T. Beauregard and others. Citation to George W. Binder.

Marshal's return.

Received Jun' 9, 1876, by the U. S. marshal, and, on the 13th day of

June, 1876, served a copy hereof on George W. Binder, defendant and appellee, by handing the same to Henry C. Miller, solicitor for said Binder, in person, in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal.
By S. W. REED,
D'y U. S. Marshal.

On this 16th day of June, 1876, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 16th day of June, 1876.

F. B. VINOT,
U. S. Comm'r.

614 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Augustus C. Graham, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank F. Case, receiver thereof, is complainant and appellant, and you and others are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS, *Judge.*

(Indorsed:) United States circuit court. No. 5931. F. F. Case, receiver 1st National Bank of N. O., vs. G. T. Beauregard and others. Citation to Augustus C. Graham.

Marshal's return.

Received Jun' 9, 1876, by the U. S. marshal, and the same is returned not served. Augustus C. Graham, within named, after diligent search and inquiry, could not be found within the district of Louisiana.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 9th day of September, 1876, personally appeared before me the subscriber, S. W. Reed, and makes oath that he could not serve the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 9th day of September, 1876.
F. B. VINOT,
U. S. Comm'r.

615 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Joseph Hernandez, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank F. Case, receiver thereof, is complainant and appellant and you and others are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS, *Judge.*

(Indorsed:) United States circuit court. No. 5931. F. F. Case, receiver 1st Nat'l Bank of New Orleans, vs. G. T. Beauregard and others. Citation to Joseph Hernandez.

Marshal's return.

Received Jun' 9, 1876, by the U. S. marshal, and, on the 10th day of June, 1876, served a copy hereof on Joseph Hernandez by handing the same to him in person in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
Dy Marshal.

On this 16th day of June, 1876, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation, as stated in his official return hereon.

S. W. REED,
Dy U. S. Marshal.

Sworn to and subscribed before me this 16th day of June, 1876.
F. B. VINOT,
U. S. Comm'r.

616 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Thomas P. May, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United

States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank F. Case, receiver thereof, is complainant and appellant, and you and others are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

(Indorsed:) United States circuit court. No. 5931. F. F. Case, receiver 1st National Bank of N. O., vs. G. T. Beauregard and others. Citation to Thomas P. May.

Marshal's return.

Received Jun. 9, 1876, by the U. S. marshal, and on the 12th day of June, 1876, served a copy hereof on Thomas P. May, by handing the same to him in person in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 16th day of June, 1876, personally appeared before me S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Subscribed and sworn to before me this 16 day of June, 1876.

F. B. VINOT,
U. S. Comm'r.

617 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the New Orleans and Carrolton Railroad Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank F. Case, receiver thereof, is complainant and appellant, and you and others are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Su-

preme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

(Indorsed:) United States circuit court. No. 5931. F. F. Case, receiver 1st National Bank of N. O., vs. G. T. Beauregard and others. Citation. N. O. & Carrolton R. R. Co.

Marshal's return.

Received Jun. 9, 1876, by the U. S. marshal, and on the 10th day of June, 1876, served a copy hereof on the N. O. & Carrollton Railroad Company, by handing the same to W. Van Benthuysen, the president of said railroad company, in person in this city.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 16th day of June, 1876, personally appeared before me S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 16th day of June, 1876.

F. B. VINOT,
U. S. Comm'r.

618 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Alex. Bonneval, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank F. Case, receiver thereof, is complainant and appellant, and you and others are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy

EDWARD C. BILLINGS,
Judge.

(Indorsed:) United States circuit court. No. 5931. F. F. Case, receiver 1st Nat'l Bank of New Orleans, vs. G. T. Beauregard and others. Citation to Alex. Bonneval.

Marshal's return.

Received Jun. 9, 1876, by the U. S. marshal, and on the 12th day of June, 1876, served a copy hereof on Alexander Bonneval, defendant and appellee, by handing a copy of the same to him in person, in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal.
By S. W. REED,
D'y Marshal.

On this 16th day of June, 1876, personally appeared before me S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 16th day of June, 1876.
F. B. VINOT,
U. S. Comm'r.

619 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Gustave T. Beauregard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank F. Case, receiver thereof, is complainant and appellant, and you and others are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS,
Judge.

(Indorsed:) United States circuit court. No. 5931. F. F. Case, receiver 1st National Bank of N. O., vs. G. T. Beauregard and others. Citation to G. T. Beauregard.

Marshal's return.

Received Jun. 9, 1876, by the U. S. marshal, and on the 13th day of June, 1876, served a copy hereof on G. T. Beauregard, by handing the same to H. C. Miller, his solicitor herein, in person, in the city of New Orleans.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 16th day of June, 1876, personally appeared before me S. W.

Reed, and makes oath that he served a copy of the within citation, as stated in his official return hereon.

S. W. REED
Dep U. S. Marshal.

Sworn to and subscribed before me this 16th day of June, 1876.
E. B. VINOT,
U. S. Comm'r.

620 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the Fourth National Bank of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for appeal, filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the First National Bank of New Orleans, represented by Frank E. Case, receiver thereof, is complainant and appellant, and you and others are defendants and appellees, to show cause, if any there be, why the judgment rendered against the said complainant & appellant, as in said petition for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-six.

EDWARD C. BILLINGS, *Judge.*

621 Indorsed: United States circuit court. No. 5041. F. E. Case, receiver 1st Nat'l Bank of New Orleans, vs. G. T. Beauregard and others. Citation to the Fourth Nat'l Bank of N. Y.

Marshal's return.

Received June 9, 1876, by the U. S. marshal, and on the 12th day of June, 1876, served a copy hereof on the Fourth National Bank of New York, by handing the same to W. W. King, the solicitor of said bank, in person, in the city of New Orleans.

S. E. PACKARD,
U. S. Marshal.
By S. W. REED,
Dep Marshal.

On this 16th day of June, 1876, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation, as stated in his official return hereon.

S. W. REED,
Dep U. S. Marshal.

Sworn to and subscribed before me this 16th day of June, 1876.
E. B. VINOT,
U. S. Comm'r.

Indorsement on cover: No. 167. Frank E. Case, receiver First National Bank of New Orleans, appellant, vs. G. T. Beauregard et al. Louisiana C. C. U. S. Filed 28th September, 1876.

Supreme Court of the United States.

OCTOBER TERM 1878.

No. 167.

FRANK F. CASE, RECEIVER FIRST NATIONAL BANK OF NEW ORLEANS, APPELLANT,

versus

G. T. BEAUREGARD ET AL.

Appeal from United States Circuit Court for the District of Louisiana.

J. D. ROUSE,
Solicitor for Complainant.

Clark & Hofeline, Brief Printers, 112 Gravier Street.

Supreme Court of United States.

OCTOBER TERM 1878.

No. 167.

FRANK F. CASE, RECEIVER FIRST NATIONAL BANK OF NEW ORLEANS, APPELLANT,

versus

G. T. BEAUREGARD ET AL.

Appeal from United States Circuit Court for the District of Louisiana.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

G. T. Beauregard, having leased the New Orleans & Carrollton Railroad for a term of twenty-five years, formed a partnership with Thos. P. May and A. C. Graham, for the purpose of operating said road under said lease. The partnership made large expenditures in changing the road into a horse railway, and purchasing cars, iron, mules, etc., as well as real estate necessary to carry on its operations. An account was opened by the partnership with the First National Bank of New Orleans, (of which said Graham and May were successively president) in the name of Beauregard,

lessee, and large sums of money obtained therefrom by overdraft upon said bank, all of which was used in the operations of said railroad, or the purchase of the material, equipments and real estate aforesaid. Said bank failed May 13th, 1867, and at the time of its failure, said partnership was indebted thereto, in the sum of $237,008.89, obtained by such overdraft and expended as aforesaid, although the overdraft had been apparently reduced to $72,008.89, by two fictitious credits—one of $40,000 by the note of G. T. Beauregard, lessee, (still held by the bank, and unpaid) and one of $125,000 by a draft drawn by May upon Graham, and by May's direction credited in said account to conceal the overdraft from the bank examiner; said draft then being, as it hath always been worthless.

May being indebted to the United States for more than one million of dollars, on May 14th, assigned his property to said United States, "*in part payment of said indebtedness*," in which assignment was included, "The interest of the said May, in and to the Carrollton Railroad Company, and the property, stock and appurtenances thereunto belonging." (*Exhibit N*, p. 24). Again, May 16th, he made a more formal transfer to the United States, of said interest, wherein he describes it as being one-third part and interest in the lease, franchises and property of said railroad, acquired by Beauregard, for joint account of himself, May and Graham. (*Exhibit H*, p. 26). In the last act, May professes to transfer Graham's share, also, under a power of

attorney, and as his agent, although he declares that he was himself the owner of that interest as well. But Graham had himself, on the 8th of May, assigned his interest in said partnership to the Fourth National Bank of N. Y. (*Exhibit M*, p. 54).

Under the supposition that the United States had acquired a two-thirds interest in the lease of the railroad, and the real estate and other property of the partnership aforesaid, Wm. Bell, described as a special agent of the United States on the 21st of August, 1867, as such special agent, made a pretended conveyance of said supposed interest to the defendants Bonneval, Binder and Hernandez. (*Exhibit I*, p.34). The act of Bell not being approved by the Secretary of the Treasury, Edward Jordan, solicitor of the Treasury, with the approval of the Secretary thereof, made on the 31st of October, 1867, another conveyance of said supposed interest of the United States to the parties last aforesaid. (*Exhibit K*, p. 43). In each of these acts, the *real estate* purchased by the partnership is described, and the supposed interest of the United States therein sold. The sale was *not made at public auction*, nor after three months' advertisement, as required by law.

On October 15th, 1867, Bonneval, Binder and Hernandez joined Beauregard in an agreement with the New Orleans & Carrollton Railroad Company, whereby they surrendered to the latter all interest they had in the lease of the road and property of the partnership; and said company entered into possession of said prop-

erty, and continued in such possession at the time this suit was brought. (*Act of Fusion, exhibit L*, p. 47).

In the act of sale by Bell, (p. 34), and in the agreement accompanying the act of sale by Jordan, (p. 39,) the indebtedness of the partnership to said First National Bank to the extent of $112,008.89, was recognized—the fictitious credit of $125,000 in said account, not having then been discovered—and in the act of fusion said company assumed all the liabilities of the lessee, and has since discharged all of them, except the debt due to said bank, it being at the time the bill was filed, the sole creditor of the partnership.

Thus the New Orleans & Carrollton Railroad Company became possessed of all the assets of said partnership, and still retains the same. Each of the partners was at the time of the several conveyances aforesaid, and ever since then, hath been insolvent. These facts were known to said company at the time it took possession of said property, and so was the fact of the debt of the partnership to said bank; and so were these facts known to each defendant at the time he dealt with said property, and their acts in the premises operated as a fraud upon said bank.

Said bank having failed, the complainant was appointed receiver under the provisions of the National Bank act, and brought his bill herein to subject the property of said partnership in the possession of said railroad company to the payment of the aforesaid debt due to he bank, setting forth therein the facts aforesaid. (*See*

amended bill, p. 73), and claiming that as a creditor of said partnership, the bank had a right to be paid out of the partnership property, in preference to the creditors of the individual partners.

The answers (pp. 83 and 92), admit directly or substantially the foregoing facts, but deny the conclusions of law drawn therefrom, by the complainant.

Beauregard tacitly admits his insolvency, (p. 91). He also admits the insolvency of May, and that Graham was largely indebted; but whether insolvent or not, has no belief, (p. 90). Similar admissions as to insolvency of said parties are made in the answers of the railroad company, Bonneval, Binder, and Hernandez, (p. 99). The insolvency of Graham is shown by the testimony of Chittenden, (p. 115). May's bankruptcy was admitted at the hearing, (p. 217).

The railroad company denies that it assumed the debt due the bank, though it admits the act of fusion, (*exhibit L.*, p. 47), wherein it assumes all "debts due by or claimed from the lessee."

A decree *pro confesso* was entered against May, (p. 111).

The evidence establishes all the facts charged in the bill, and shows the bank to be the sole creditor of the partnership.

At a hearing, a decree was made dismissing the bill. (p. 231).

ERROR ASSIGNED.

The complainant assigns for error, the decree of the Circuit Court, dismissing the bill.

ARGUMENT.

I.

The law of partnership as involved herein.

The object of the bill is to follow and subject partnership assets to the payment of a partnership debt. If this purpose of the bill be kept in view, the solution of the questions arising in the case will be less difficult. In *Beauregard vs. Case*, 1 Otto, 134, this Court examined the contract between Beauregard, May and Graham, now involved herein, and held that it constituted a partnership; and passing upon the same facts touching the indebtedness of the partnership to the bank, which are disclosed by the record in this case, found it fully established

The respective rights of the partners and their joint creditors, at common law and under our code, must necessarily be considered in this connection.

Mr. Justice Strong well stated one of the doctrines of the common law in *Bank vs. Carrollton Railroad*, 11 Wall. Rep., 628, as follows:

"It has repeatedly been determined, both in the "British and American courts, that the property or "effects of a partnership belong to the firm, and not to "the partners, each of whom is entitled only to a share "of what may remain after payment of the partnership "debts, and after a settlement of accounts between the "partners;" therein following *West vs. Skip*, 1 Vesey, 239; and *Taylor vs. Field*, 4 Vesey, Jr., 396.

"That the creditors of a firm are entitled to the "preference of having their debts paid out of the part- "nership funds before the private creditors of either of "the partners, is a doctrine well settled by courts of "chancery." 1 Story's Eq., 675. "And any transfer "or sale of the property or the effects of a firm which "defeats and destroys the preference, cannot be sus- "tained in equity."

Collins, et al., vs. Hood, 4 McLean, 186.

See, also, *Murrell, et al., vs. Neill, et al.*, 8 How., 414.

The enforcement of the equitable right of partnership creditors to be paid out of partnership assets has given rise to much discussion. It is conceded that this right may be defeated by the *bona fide* dissolution of the firm, and assignment of its assets. But the authorities are uniform that the dissolution and assignment must be *bona fide*, or this right of the joint creditors will not be defeated.

The most frequent application of the rule is to cases where a partner has retired and transferred his interest in the partnership to his co-partner, who assumed the joint liabilities and continued the business. Where such an assignment is *bona fide*, the joint assets are converted into separate assets, and the equity of the retiring partner to have them applied to the extinguishment of the joint debts, is extinguished by him in consideration of the assumption thereof by his assignee. The leading case upon this point is *Ex parte Williams*,

11 Vesey, Jr., 3, and the rule is there confined to the case stated.

"Therefore," said Lord Eldon, in *Ex parte Ruffin*, 6 Vesey, Jr., 119, "a *bona fide* transmutation of the property, is understood to be the act of men, acting fairly, winding up the concern, and binds the creditors."

But where there has been no *bona fide* transmutation of partnership property into separate property, the equitable right of the partners, to have the partnership funds applied to the joint debts still exists, and enures to the benefit of the joint creditors.

Each partner, says Justice Story, "has *a specific lien* "on the present and future property of the partnership, "not only for the debts and liabilities due to third per- "sons, but also for his own amount or share of the "capital stock, and funds for all moneys advanced by "him for the use of the firm, and also for all debts due "to the firm, for moneys abstracted by any other part- "ner from such stock and fund beyond his share. Story on Part., Sec. 97. And again speaking of the right of partners now under consideration, he says:

"This right is a *privilege or lien* on those funds, fully "recognized and enforced by Courts of Equity; and "through this right of the partners themselves is worked "out *the known equity of the joint creditors*, to have a "priority of payment of their debts, out of the same "funds, in opposition and preference to the separate "creditors of each partner."

Ibid., Sec. 326; see also Sec. 261.

Said Lord Elden in *ex parte Williams:*

"There are various ways of dissolving a partnership; "effluxion of time; the death of one partner; the "bankruptcy of one, which operates like death; or as "in this instance, a dry, naked agreement that the "partnership shall be dissolved. In no one of these "cases can it be said, that to all intents and purposes, "the partnership is dissolved, for the connection still "remains, until the affairs are wound up. The repre- "sentation of a deceased partner or the assignees of a "bankrupt partner, are not strictly partners with the "survivor or the solvent partner; but still, in either "of these cases, that community of interest remains, "that is necessary, until the affairs are wound up; and "that requires that what was partnership property "before shall continue for the purpose of a distribution "not as the rights of the creditors, but as the rights of "the parties themselves require, *and it is through the "operation of administering the equities as between the "partners themselves,* THAT THE CREDITORS HAVE THAT "OPPORTUNITY; as in the case of death, it is the equity "of the deceased partner, *that enables the creditors to "bring forward the distribution.*"

In case of insolvency this privilege of partners, and right of priority conceded to partnership creditors, is classed by Story under the head of implied trusts.

"Joint creditors in case of insolvency, are deemed in "equity to have a right of priority of payment, before "the private creditors of any separate partner. The

"joint property is deemed a *trust fund*, primarily to be "applied to the discharge of the partnership debts "against all persons not having a higher equity. A "long series of authorities has established this equity "of the joint creditors to be worked out through the "medium of the partners; that is to say, the partners "have a right *inter sese*, to have the partnership prop- "erty first applied to the discharge of the partnership "debts; and no partner has any right except to his "own share of the residue; and the joint creditors are "in case of insolvency, *substituted to the rights of the "partners*, as being the ultimate *cestuis que trust* of the "fund to the extent of the joint debt. * * * And "in equity they have a right to follow it, as a trust "into the possession of all persons who have not a "superior title." 2d Story's Eq., Sec. 1253. See also Sec. 675, and Sec. 1207.

If the legal title to real estate which is partnership property, is taken in the name of one or more partners; equity will regard it as held in trust for the partnership, and the trust can be enforced by the interested parties, *whether partners or creditors.* 5 Waits' Actions and Def., 120.

That partnership assets constitute a *trust fund*, in cases of insolvency, for the payment of partnership debts, and the substitution of the joint creditors, to the equities of the partners, as being the ultimate *cestuis que trust*, is expressly recognized in *Allen vs. Center Valley Co.*, 21 Conn. R. 130. In that case the Court

said: "In such cases of insolvency, it may be well said "we think, that the joint effects remaining may be "treated as a *trust fund* for the joint creditors, WHO "WILL BE SUBSTITUTED IN EQUITY *to the rights of the part-* "*ners*, and be permitted to *pursue the proper remedies* "to enforce their prior rights, as was done in the case "of *Witter vs. Richards*, 10 Conn. R. 37."

In that case, a bill was filed by a creditor of a partnership, the property of which had been attached by a creditor for a separate debt of one of the partners. It was objected that the complainant had an adequate remedy at law, but the Court said: "Here is a fund for "which several persons are struggling. One only can "obtain it. While winding their way through a court "of law, the fund may be almost exhausted. It seems "to me peculiarly proper, that these conflicting par- "ties should be brought before a Court of Chancery, "where all may be heard, and their several rights de- "termined; and that is the only adequate remedy."

The partners did not in that case set up their equity. It was admitted that the seizing officer might have filed a bill to determine the conflicting claims, and the Court was of the opinion, "that if these facts shown by the "officer, could give this Court jurisdiction, the same "facts shown by another person interested, would give "the same jurisdiction; in other words, that *the juris-* "*diction depends rather upon the facts shown*, than the "person who shows them."

In that case it was the partnership creditor who showed the facts by his bill, and it was maintained.

See also *Brewster vs. Hammett*, 4 Conn., 540.

These authorities explain and enforce the principle so often affirmed, that "through the rights of the part-"ners, themselves, is worked out, the known equity of "the joint creditors to have a priority of payment of "their debts out of the joint estate."

While the equity exists, it may be enforced by the creditor, even against the opposition of the partner, as was done in the case of *Witters vs. Richards.* The joint assets constituting a trust fund, and the joint creditors being, as Mr. Justice Story says, "the ultimate *cestuis que trust* of the fund," the insolvency or neglect of the trustees,—i. e., the partners,—gives to the *cestuis que trust* the right to invoke the jurisdiction of a court of equity, for the protection and proper application of such trust fund. The defendants contend that it is only through the medium of the partners that the rights of the creditors can be secured, whereas, it is through the equity of the partners, "to which they are sub-stituted," as Mr. Justice Story says, and a court of chancery will permit the creditors to enforce that equity, of the partners for their own relief

If this were not so, partners might conspire to defraud their joint creditors by applying the property of the firm to their several debts.

The rule under discussion, although most frequently applied in cases of bankruptcy, is founded upon general equity.

Ex-parte Elton, 3 Vesey, Jr., 238.

3 Kent's Com., p. 59, n. 2.

Collins et al., vs. Hood. 4 McLean, 188.

But the Louisiana Code gives a statutory protection to the rights of partnership creditors, recognizing to the fullest extent, those which courts of chancery in England and the common law States have established, and adding thereto a *privilege* upon partnership assets in favor of partnership creditors.

Article 2823 [2794] of the Civil Code provides that "The partnership property is liable to the creditors of "the partnership, *in preference to those of the individual* "*partner*."

This provision of the Code was well considered by that eminent jurist, Judge Martin, soon after its adoption. In *Morgan vs. His Creditors*, 8 N. S., p. 606, he says: "Had the New Code been absolutely silent on the distribution of property of persons engaged in commercial partnerships, in case of insolvency, we might conclude they have left the matter to be regulated by the pre-existing provisions. But they have acted upon the subject; they have given a *privilege* to creditors of a partnership, on the partnership estate; have, by a general clause, abolished the privilege of separate creditors of a partner on his separate estate. It is our duty to conclude that the Legislature has acted on the whole subject, in the Civil Code, and left nothing in this particular to be regulated by the commercial law."

This was followed by numerous decisions supporting

the privilege accorded to partnership creditors upon partnership assets, as will appear by the following cases:

United States vs. Baulos' Ex'r., 5 N. S., 567.

Hagan, et al. vs. Scott, 10 La. R., 345.

Gardiner, et al. vs. Smith, 12 La. R., 370.

Claiborne, et al. vs. Creditors, 13 La. R., 279.

Bank of Tennessee vs. McKeage, 11 Rob. R., 130.

Moore vs. Hampton et al., 3 An. R., 189.

Smith vs. McMicken, 3 Ann. R., 319.

In the last case, the Court said:

"The partnership assets are a *trust fund*, for the "partnership creditors who are to be paid before the "respective partners, and, by consequence, their "creditors can receive anything. But the duty of the "partnership is frustrated, and may become utterly "impracticable, if its control over its own property is "wrested from it. Such a state of things would enable "the creditor of the partner to do what the partner "could not himself do. It would be in direct conflict "with the spirit of that provision of the Code which "says that 'every partner may make use of the things "*belonging to the partnership*. provided he employs "the same to the uses for which they are intended, and "he does not use them in such a manner as to prevent "his partners from using them according to their "right, or against the interest of the partnership.'" Art. 2870 [2841].

The preference accorded by the Civil Code to part-

nership creditors, to be paid out of partnership assets, and their privilege upon such assets, are thus firmly entrenched in judicial authority.

While at common law, equity recognizes the right of partnership creditors to be paid by preference, out of the partnership assets, the Louisiana statute, as interpreted by the Courts, goes further, and gives *privilege upon* such assets, to the firm creditor. Or in the language of the Supreme Court, in *Saloy vs. Albrecht*, 17 An. Rep., 75: "The partnership property is the common "*pledge* of the partnership creditors, who must be paid "out of it before the individual creditors of the mem- "bers."

Nor can this privilege be defeated by the acts of the partners. Herein the law of Louisiana differs from the common law. Says Chief Justice Merrick, in the *Succession of Beer*, 12 An., 698:

"Here the privilege is given the creditors by "express law. It is now incumbent upon the party "who maintains the loss of the right thus expressly "granted, to show some provision of law, extin- "guishing the privilege in this case or excepting it "from the operation of the general rule. None such "has been pointed out." * * "On general prin- "ciples, we think it ought not to be in the power of the "partners by arrangements among themselves to defeat "the rights of their creditors."

The case of *Priestly, et al. vs. Bisland, et al.*, 9 Rob., 425, enforces this view with great vigor. It is a case

where one member of an *ordinary partnership*, (one in which the members are bound for the debts in proportion to their number, and not in solido,) caused his partner's share to be seized and sold to satisfy a debt due to him individually, and became the purchaser. Afterwards, certain creditors of the partnership sought to enforce their privilege as such upon the partnership property in the possession of the purchasing partner. The question was, whether the property of the partnership, now entirely owned by Bisland, is liable in his hands for the payment of the joint debts? The Court said :

" We think it is. Bisland, who is one of the part-
" ners, took the property in payment of a part of his
" individual debt; but he must be presumed to have
" been cognizant of the claims standing against the
" partnership, and to have purchased the property sub-
" ject to the rights of the creditors, who cannot be
" prejudiced by any act of the partners between them-
" selves." Then, quoting Article 2794 of the Code, the Court continued: " It is perfectly clear, from this text
" of the law, that when Bisland caused his partner's
" share to be seized and sold to satisfy his individual
" claim, and became the purchaser of said share, *he*
" *bought it subject to the payment of the partnership debts;*
" and if so, he stands with regard to the creditors of the
" partnership in a situation very similar to a third
" possessor of property mortgaged, who is bound either
" to abandon the property to the exercise of the cred-

" itor's right of action or to pay the debt. How this " would be with regard to an innocent third person, " becoming the purchaser of partnership property " without notice, is a different question, which it is now " unnecessary to consider; but we are satisfied as to " Bisland, who had either a real or constructive notice, " that he cannot object to the preference which the law " gives to the partnership creditor who finds the part- " nership property in his possession. The doctrine " recognized by the 2794th Art. of the Civil Code, is " fully developed by Pardessus, Droit Commercial, Vol. " 4, No. 1089, whose opinion on this subject is in con- " cordance with that of Troplong, Privileges et Hy- " pothéques, Vol. 2, No. 434."

These principles of law being established, the complainant has under the facts of this case, shown his title to the relief he seeks. The First National Bank, is admitted to be a creditor of the partnership of May, Graham and Beauregard, the insolvency of each of whom is established; and the railroad company is fouud in possession of all the *property* of the partnership, claiming title thereto, under an assignment by May, of his and Graham's *interest in the partnership*, to his, (May's), separate creditor, on account of his individual debt. May's separate creditor knew at the time of said transfer, of the existence of said debt due to said bank; and the railroad company, and all intermediate purchasers, were also aware of it, and of the motive of such transfer *at the time they* acquired their interests, as appears by

the acts themselves, (see pp. 37 and 41); and admissions in the answer, (p. 97, *et seq.*) And yet we are gravely told that these acts worked a transfer of the property itself, to the extent of a two-third interest therein, and that the partnership creditor cannot enforce his privilege thereon for the payment of his debt. These defendants never provoked a settlement of the partnership to ascertain what, if any interest, they acquired by the assignment. Moreover, they are claiming Graham's interest as well as May's. But Graham had assigned his interest to the Fourth National Bank before May attempted to do so, and thereby removed it from the operation of the power relied upon by May. It would be folly to contend that by giving a general power of attorney to May, Graham deprived himself of the right of disposition of his own property. Moreover, Graham in granting this power to May, declared that the acts authorized were to be done *in his behalf*, (see the act, p. 163). Will any one have the hardihood to say that this authorized May to apply Graham's property to the payment of his own debts? We would suppose not, but for the pretensions of the defendants. Such disposition of Graham's interest, was a fraud upon his principal, and the purchaser became a participator in the fraud. *Dwight vs. Simon*, 4 Ann. 496; *Hodge vs. Coombs*, 1 Black, 192.

Moreover, a conveyance of partnership property by a partner in payment of his separate debt, is a fraudulent conversion thereof, and the separate creditor

whether he has notice or not, takes no title.

Rogers vs. Butchelor, 112 Peters, 221.

Sheriff vs. Wilkes, 1 East 48.

Dwight vs. Simon, 4 Ann. R., 496.

The legal title to some portions of the real estate acquired by the partnership, was taken in the name of Beauregard, and other portions in the name of the several partners; but it was all bought and paid for with partnership funds, and for the use and purposes of the partnership.

Where real estate is purchased for partnership purposes, and on partnership account, it is wholly immaterial in the view of a Court of Equity, in whose name or names the legal title is taken, whether in the name of one partner, or all the partners, it is equally deemed partnership property.

2 Story's Eq., Sec. 1207.

5 Waits' Actions and Defenses, 120.

Claggett vs. Kilbourn, 1 Black, 349.

Fairchild vs. Fairchild, 64 N. Y., 471.

The same rule applies in Louisiana, except in the case of commercial partnerships, the exception arising from the nature of such partnerships, the business of which is confined to the purchase or sale of personal property, or carrying such property for hire in *ships or other vessels*. Civil Code, Art. 2825, (2796).

2. *Equity will give the Complainant a remedy.*

Having established our right in the premises, it

would be strange if a Court of Equity were powerless to afford relief.

It is plain that the complainant has no adequate remedy at law. The partnership has long since been dissolved, and the property thereof has passed out of its control. Each of the partners is insolvent, and no provision has been made by them for the payment of their joint debt to the complainant. All other creditors have been paid, leaving the bank the sole creditor. Its debt is not disputed. The partnership property is largely still *in esse*, and in possession of one of the defendants, who acquired that possession without any right or title thereto, with full notice of the claim of the bank, and in a manner amounting in fact to spoliation. Graham never assented thereto, nor did the Fourth National Bank, to which he assigned a *quasi* interest in his share. What would a judgment at law against the partners avail? The legal title to a portion of the property, was taken in the name of Beauregard, and numerous acts have been passed professing to transfer the legal title of the whole of said property, until ultimately the Carrollton Railroad Company is found in possession, claiming full ownership. Is there anything left to levy an execution upon;—or if levied, would any one purchase at a sale thereunder?

The law of Louisiana having established a privilege upon such property, and given the right to pursue it into the hands of third persons, the remedy to enforce that privilege is necessarily on the equity side of the

Circuit Court. If it be necessary to invoke the common law lien of the partners, with which Graham, at least, has never parted, and to which the complainant is substituted, with a right to pursue his remedies, it is only in chancery that that right can be made effective and that remedy enforced. Can the interest of May in the partnership, under a transfer of which, the railroad company claims, be determined except by an account of the partnership, and marshalling its assets? And where else but in a Court of Equity can that be done?

But we are told that we must first obtain a judgment at law, and the learned Justice who tried this cause in the Court below, is made to say in 1st Woods' Rep. 125: "That an insurmountable difficulty in complainant's "case is, that he is only a simple contract creditor, "without any judgment, execution, or specific lien, to "stand upon." We think we have shown conclusively that a *specific lien* upon the partnership property, in favor of the joint creditor, does exist under the Louisiana statute What is a privilege which authorizes the creditor to pursue the property of the partnership into the hands of third persons, and subject it to the payment of his debt, but a specific lien? Said the same learned Justice: "If a statute subjects a particular fund to a particular class of claims, it may be regarded as imposing a *trust* thereon; * * * In all such cases, the creditors for whose benefit as *cestuis que trust*, the fund is held in trust, *may come into Court* WITHOUT

A JUDGMENT, and ask for its administration, in accordance with the trust."

Even if our equity be dependent upon Graham's, it is only dependent upon it as a foundation, and that is sufficient to maintain the jurisdiction; or in the language of the Supreme Court of Connecticut, above quoted, the jurisdiction depends rather upon the facts shown, than upon the person who shows them.

There is no mode at law of reaching the fund applicable to the payment of the complainant's debt. Said Chief Justice Marshall, in *Russell vs. Clark's Ex'rs.*, 7 Cranch, 69: "It is also true, that if a claim is to be "satisfied out of a fund, which is accessible only by the "aid of a Court of Chancery, application may be made "in the *first instance*, to that Court, which will not "require that the claim should be first established in a "Court of law."

The Supreme Court of Indiana, quoted and followed Chief Justice Marshall, in *O'Brien vs. Coulter*, 2 Blackf., p. 423.

In *Lawton vs. Levy*, 2 Edwards Chancery R., 201, it is said: "If parties concerned in a partnership, have dis- "solved and made a disposition of the property, which "was illegal and fraudulent as to creditors of the part- "nership, the Court would sustain a bill filed by the "latter, *even though they might be only simple contract* "*creditors*, and cause the partnership property to be "applied to partnership purposes, according to law and "equity."

The right of general creditors to attack a fraudulent settlement without first obtaining judgment at law, was maintained in *Russell vs. Hammond*, 1 Atk., 13; and in *Taylor vs. Jones*, 2 Atk., 600.

It is well settled that the creditor of a deceased debtor, may in the first instance resort to equity, and assail a fraudulent conveyance, without having recovered a judgment at law, especially when the debtor's estate is insolvent. *Hagan vs Walker*, 14 How., 33; *Frazer vs. Western*, 1 Barb. Chancery, 223. The reason why proceedings at law are dispensed with in such cases, is as stated in *Frazer vs Western*, because a judgment against the executors will give no priority, as to real or personal estate. "It may well be," said the Chancellor, "that the personal estate should be "shown to be insufficient; because even a volunteer "may have a right to have the admitted assets of the "estate, first applied. But this is matter of fact merely "and can as well be charged and proven, under an alle- "gation of insolvency, or insufficiency, as established "by an execution returned unsatisfied." See also *Offut vs. King*, 1 McArthur, 312; *Hills vs. Sherwood*, 48 Cal. 386.

The reason for the rule in cases of deceased insolvent debtors, applies as well to this case. The existence of the partnership is terminated, and insolvency is alleged and proved. No assets exist, except such as have been so fraudulently conveyed, as to prevent the creditor from obtaining a lien by judgment and execution.

These facts may as well be alleged and proved in this suit, as in the case of a deceased debtor.

The real object of requiring judgment at law and execution returned unsatisfied, in any case, preliminary to a creditor's bill, is to show that the creditor is without legal remedy.

"A judgment and execution unsatisfied, are evidence " of insolvency, of inability to collect. They are how- " ever evidence only; and the fact may be established " as well by other evidence; among other modes, by " an assignment and continued suspension of business, " or other notorious indications." *Terry vs. Tubman*, 2 Otto, 160.

Even after judgment, if it appears that the judgment debtor is insolvent, and that the issuing of the execution would be of no practical utility, it may be dispensed with. *Turner vs. Adams*, 56 Mo., 95; *Postlewait vs. Howes*, 3 Iowa, 365; *Payne vs. Sheldon*, 63 Barb, 169. And where the judgment is so old that no proceedings could be had at law under it, without its being first revived, the bill will be retained. *Burroughs vs. Elton*, 11 Vesey, p. 36; *Hagan vs. Walker*, 14 How. 35.

The following cases hold that a creditor may, without having first obtained a judgment at law, come into a court of equity to set aside fraudulent conveyances of property or other devices resorted to for the purpose of hindering or delaying creditors, and subject the property, by sale or otherwise, to the satisfaction of his debt.

Thurmond vs. Reese, 3 Ga., 449.
Croone vs. Biven, 2 Head. (Tenn.), 339.
Cornell vs. Radway, 22 Wis., 260.
Sanderson vs. Stockdale, 11 Md., 563.
Cook vs. Johnson, 14 N. J. (Eq.,) 51.
Innes vs. Lansing, 7 Paige Ch'y, 583.

Chancery will avoid circuity of action, and afford that relief in the first instance, which, under the circumstances of the case, it will be called upon to do in the end.

It bineg shown that no assets exist upon which a judgment at law could operate without the aid of a court of equity, it will not require that preliminary. *Lex neminem cogit ad vana sen inutilia a peragenda.*

The application of the assets of an insolvent partnership to the payment of the separate debts of the individual partners, is under all the authorities, fraudulent, and is of itself ground for the interposition of a court of chancery.

These views, supported as they are by authority, show that the decree dismissing the bill is erroneous; that it should be reversed, and a decree made in favor of the complainant, recognizing his demand and privilege upon the partnership assets in the possession of the defendants; declaring their transfer thereof void as against complainant, and directing the same to be sold to pay the amount due him, unless the defendant in possession shall pay the debt, within some short day to be fixed in the decree.

But if, under the circumstances of the case, the Court shall be of opinion that a judgment at law and execution returned *nulla bona* must precede relief in the premises in a court of equity, the decree is still erroneous in dismissing the bill absolutely, and it should be amended so as to dismiss the bill *without prejudice*.

Respectfully submitted,

J. D. ROUSE,

Solicitor for Complainant.

CHARLES CASE,

Of Counsel.

U. S. SUPREME COURT.

No. 167.

FRANK F. CASE,
Receiver of the First National Bank,

vs.

G. T. BEAUREGARD, ET. ALS.

BRIEF FOR THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY.

HENRY C. MILLER,
Solicitor for Defendants.

U. S. SUPREME COURT.

No. 167.

FRANK F. CASE,
Receiver of the First National Bank,

vs.

G. T. BEAUREGARD, ET. ALS.

BRIEF FOR THE NEW ORLEANS AND CARROLLTON RAILROAD COMPANY.

STATEMENT OF FACTS.

On the 12th of April, 1866, Gustave T. Beauregard, one of the defendants, leased from the New Orleans and Carrollton Railroad Company its railroad tracks, extending from New Orleans to Carrollton, for the term of twenty-five years from the date of the lease, the first year's rent being $25,000—and increasing every year until the expiration of the lease.—Record p. 9.

The lease although made to Beauregard individually, was made on his part in prospect of a partnership to conduct the enterprise, and Beauregard being

without means and expecting to obtain the necessary capital from his partners, testimony of Beauregard, p. 136. Accordingly on the 1st April, 1866, a partnership was formed between G. T. Beauregard, Thomas P. May and Augustus C. Graham, for the operating of this railroad under the lease to Beauregard. By the terms of the partnership agreement Beauregard was charged with the management of the road, he was to receive only a salary for his services, and when the capital furnished by his copartners May and Graham was reimbursed to them with eight per cent interest, the partners were to share the profits equally. On their part May and Graham were to furnish the capital requisite to conduct the partnership, fixed at three hundred thousand dollars or $150,000 each, Record pp. 13, 14. Previous to the lease steam locomotives had been used on the road, but after the lease and the formation of the partnership the tracks were adapted for horse cars, important changes were effected and large purchases of property were made for the uses and better equipment of the road, all of which envolved a heavy expenditure of money.

This partnership was dissolved on the 16th May, 1867, by the assignment of the interest of May to the United States, Rec. p. 24, 26. On the 8th May, 1867, Graham assigned his interest to the Fourth National Bank, Rec. p. 54.

At the close of the partnership it was largely indebted. It had obtained money from the First

National Bank, by overdrawing its deposit account, and the indebtedness thereby created formed a large part of this indebtedness.

The United States was a large creditor of Thomas P. May, individually, i. e. for about one million and forty thousand dollars, and his indebtedness was the consideration for the assignment to the United States of May's interest in the partnership property. In that assignment May claimed to own two-thirds interest in the partnership property, and that Beauregard owned the other third, it being declared in the assignment that the interest of Graham was nominal only, and that his apparent interest belonged to May. Record p. 27. As stated, Graham asserted an interest, for he assigned it to the 4th National Bank. Rec. 54.

The price of the interest assigned by May to the United States was four hundred and eighty thousand dollars, which was to be credited on the indebtedness of May to the extent of so much of the said price as may enure to or be received by the United States from the sale of the property conveyed by May. Record p. 27.

Subsequently on the 31st October, 1867, the United States sold this interest it had acquired to Joseph Hernandez, G. W. Binder and Alexander Bonneval, for the price of two hundred and eighty-eight thousand dollars, paid by the purchasers. In this sale the United States was represented by the Solicitor of the Treasury, and there had been a previous act of

sale of the same property, executed on behalf of the United States by William Bell, its special agent. Rec. p. 34, 39.

In the conveyances by the United States, there is a reference to the claim against the partnership for the recovery of the "overdraft on the 1st National Bank, of $72,009.09, and a promissory note of G. T. Beauregard, for $40,000, in all $112,009.09"—which it is declared in the act, is not the debt of the partnership, but the exclusive debt of May. Rec. p. 41, and there is also a reference in the act of sale earliest in date, (Rec. p. 37,) to the assignment by Graham of his interest in the partnership, and against the claim on the overdraft and against assignment, it is stipulated the United States will protect and hold harmless the purchasers, but neither the overdraft or assignment is admitted to be of any force.

Next in order of date, is an agreement made between Hernandez, Binder and Bonneval, the purchasers from the United States and Gustave T. Beauregard and the New Orleans and Carrollton Railroad Company. Hernandez, Binder, Bonneval and Beauregard appear as representing all the interests in the property of the partnership of May, Graham and Beauregard, the three first named by virtue of the conveyance to them by the United States who had acquired the two-thirds interest from May. Beauregard appeared as a partner in the late partnership to the extent of his interest of one-third, and the Company appeared as the owner of the road

and the franchise, and the object of the agreement between all these parties was to consolidate their respective interests, and operate the road under this fusion and consolidation of interests. An act of the Legislature was passed, by which the Company was authorized to scale its present stock, issue additional shares of its capital stock to the extent of the value of the improvements placed on the road during the partnership, and to consolidate its interests with the other parties. Acts of Legislature of Louisiana, of 1867, No. 59, p. 124. Accordingly the Company increased its stock so as to make it eight hundred thousand dollars, of which one equal moiety or four hundred thousand dollars was awarded to Hernandez, Binder, Bonneval and Beauregard, as representing in their right, the value of the improvements put on the road by the late partnership, whose interests to the extent of two-thirds, had passed to the purchasers from the United States, the other one third being owned by Beauregard, and for and in consideration of the four hundred thousand dollars of its capital stock, the New Orleans and Carrollton Railroad Company acquired and was put into possession of all the Real Estate and other property acquired by the late partnership of May, Graham and Beauregard. And the Company in further consideration of the property acquired by it, assumed certain liabilities mentioned. See act of fusion, Record p. 50, 47, 55. In this mode the property of the partnership passed into the possession of the New

Orleans and Carrollton Railroad Company, one of the defendants in this suit, for the valuable consideration of four hundred thousand dollars of its stock, and as stated in the act of fusion.

It has been stated that at the close of the partnership it was indebted for money, obtained from the First National Bank. It is to recover that indebtedness for which the Complainant in his capacity of Receiver of that Bank, brings the present suit. He attacks the various conveyances by which the partnership property was conveyed, leaving unsatisfied the debt due by the partnership, and claims the right to follow the property and make it liable for the debt, in the hands of the New Orleans and Carrollton Railroad Company, which acquired it by the act of fusion already stated. As the complainant founds, in part, his asserted right on the facts under which the indebtedness to the Bank was created, those facts naturally find mention here, and have to be set forth with some detail.

In September, 1866, the partnership was in need of money for its expenses, and these pecuniary necessities were brought to the notice of May by S. R. Proctor the Treasurer of the partnership through the following note, p. 187.

New Orleans, September, 14, 1866.

T. P. MAY, Esq.,

Including pay rolls for last month, we have now about thirty thousand dollars due. The balance in

bank is three hundred and ninety-five dollars and twelve cents. Will you be good enough to let me know what I am to do in the premises.

S. R. PROCTOR, Cashier.

This communication was made to May because he had charge of the finances of the partnership, and under the partnership articles he and Graham were to furnish the funds requisite for the enterprise. At the date of this note May was a director in the First National Bank, was its acting President, and seems to have had full control of the administration of the Bank, the bill charging that "he at all times exercised a leading influence and control over the Bank and its administration." Rec. p. 76. May answered the communication from the Treasurer of the partnership, by instructing him to check on the Bank, and at the same time May instructed the teller of the Bank to pay said checks regardless of the state of the account. Record test. Helm, p. 210, Forbes, p. 204, Meig, p. 200.

The directions of May were followed and there was obtained from the Bank a large amount from September, 1866 to May, 1867, on the checks of the partnership, by overchecking its deposit account. The balance against the partnership arising from these overdrafts is shown by the account with the Bank at p. 34 of the Record to be $72,008.89. But there are two credits in the account, one of $40,000 of date September, 15, 1866, Rec. p. 30, and $125,000 of date March 19, 1867, Rec. p. 33, which the bill

charges to be fictitious and rejects, and adding these credits, claims that the real indebtedness to the Bank is $237,008.89. These credits will be more especially alluded to hereafter. As stated May occupied official positions in the Bank when these overdrafts occurred, and the influence and control he exerted in the Bank by reason of his official position is charged in the bill in connection with the overdrafts and as explanatory of the means by which the money of the Bank was obtained by the partnership, and with respect to the amount of the two credits $165,000, the bill specially charges that the amount of the credits were taken from the Bank by May in violation of his duty, as an officer of the Bank and in fraud of its rights. Record p. 76.

The credit of $40,000 was based on a promissory note of G. T. Beauregard, lessee, for that amount, drawn by May, and which he by his official position in the Bank caused to be entered to the credit of the partnership, and the note was never paid. Bill p. 76. At this time May held Beauregard's power, but with the making of the note and the entry of the credit, Beauregard had nothing to do. Test. Beauregard, Rec. p. 138, 140.

The credit of $125,000 was based on a bill of exchange for that amount, drawn by May on Graham. The bill was never forwarded for collection, and of course was never paid. At the dates when these credits were entered the account of the partnership was largely overdrawn. The object of May in hav-

ing the credit of $125,000 entered, as testified to by the Bank officers, was to meet the scrutiny of the Bank Examiner, and present to him an apparent credit in the account, which otherwise would have exhibited the overdraft. Test. Forbe's Rec p. 205, Meig's test. p. 196.

In the assertion of its claim to follow the property of the partnership alienated by the various conveyances to which attention has been called, and to make liable that property for the money obtained from the Bank by overdrafts, the bill alleges that nearly all the money paid by the partnership for the lease, equipment of road, purchases of Real Estate, etc., was obtained from the Bank, and with that money, the business was "mainly" carried on. Rec. p. 75, 77. In this connection it is therefore important to exhibit what were the pecuniary resources of the partnership, from what sources derived, to state how these resources were employed, and to detail the property acquired by the partnership.

From the formation of the partnership April, 1866 to September 6th, 1866, it had derived from capital contributed in accordance with the partnership agreement the sum of (eighty-eight thousand dollars)	$ 88,000.00
And from earnings of the road there had been derived (Sixty-five thousand two hundred and sixty-three dollars and ninety-five cents)	65,263.95
Aggregating	$153,263.95

And no part of this sum was obtained from the Bank, the sources of supply being the capital and earnings of the partnership.

See Schedule No. 1, Rec. 104, test McBride, Rec. p. 131, et. seq.

During the period of the overdrafts from September, 1866, date of Proctor's note, Rec. p. 187 to May 11, 1867, there had been derived from the Bank by overdrafts on the checks of the partnership, (two hundred and thirty-seven thousand and eight dollars and eighty-nine cents)	$237,008.89
And from the earnings of the road, (one hundred and eight thousand nine hundred and thirty-one dollars and fifteen cents)	108,931.15
From Capital	43,474.90
From other sources	18,350,53
Aggregating	$170,756,58

See Schedule No. 2, Rec. p. 106, test. McBride, Rec. 131, et seq.

The sources of income of the partnership being as stated, the items of expenditure, whether for Real Estate, property or other purposes, next claim attention, in connection with the position taken by the complainant that the property of the partnership was purchased and its business carried on mainly with the Bank's money.

The partnership acquired certain Real Estate from W. C. Raymond, on 5th May, 1866, other Real Estate from S. A. Kohn on April 30, 1866, other Real Estate from the New Orleans and Carrollton Railroad Company on 29th June, 1866, and other Real Estate from the same Company on the 15th January, 1867. See bills of sale, Record pp. 15, 17, 19, 21. All of which purchases are detailed in the bill. These purchases aggregated seventy-two thousand five hundred dollars, payments one-third cash at dates of purchases, and remainder at 1 and 2 years, in equal installments. The cash payments on the three purchases of Real Estate, earliest in point of date, to-wit, $4,166.65 in the purchase from W. C. Raymond; $2,666 65 in the purchase from S. A. Kohn, and $8,666.66 in the purchase from the New Orleans and Carrollton Railroad Co., aggregating $15,499 96, were all paid exclusively from and out of the funds of the partnership, and before any overdraft occurred. These funds of the partnership from which these payments were made, amounted to $153,263.95; Schedule No. 1, Rec. p. 104; and the residue of these funds were applied for purchases, expenses of reconstructing the road, current expenses and other purposes of the partnership, as detailed in Schedule No. 1, Record p. 104; test. McBride, Rec. p. 131, et seq. But no portion of the funds of this partnership, $153,000, invested in its Real Estate or for its other purposes, during this period from April, 1866, to September, 1866, was obtained from the Bank,

the overdrafts only commencing when these means were exhausted, and Proctor's note was written. Rec. p. 187.

Of the blended fund made up of the money obtained by overdrafts in the Bank,.....$237,008.89

And of the earnings of the partnership and its other resources, derived during the period of the overdrafts--Schedule No. 2, p. 106..... 170,756.58

Amounting to..... $407,765.47

there were expended for the Real Estate of the partnership, that is for the second or 1 year payments on the two purchases earliest in date, i. e., 5th May, 1866, (Rec. p. 15) and April 30, 1866, [Rec. p. 17] and in the cash payment on the purchases last in date, [Rec. p. 21] $4,166.66, $2,666.66 and $8,666.66, aggregating $15,499-98. The residue of these mingled funds handled by the partnership during the period of the overdrafts, was expended for various items of partnership expenditure, as set forth in Schedule No. 2, Rec. p. 106; test. McBride, Record p. 132, 133. And finally when the partnership closed it was largely indebted for installments for the purchases of its real estate and other purposes. Rec. p. 107 As to these remaining payments, on the Real Estate of the partnership and other property as well as the liabilities for other items of partnership expenditure, aggregating $117,725.80, due and unpaid at the close of the partnership, except that there was

a balance on hand of $4,433.31, arising from these mingled funds of overdrafts and partnership resources. (Schedule No. 2, Rec. p. 106,) the whole of this large indebtedness $117,725.80 was paid with the funds not of the Bank, but of the New Orleans and Carrollton Railroad Company, who acquired the property of the partnership, subject to the indebtedness, secured in part by vendor's liens encumbered with which the property was acquired by the Company. See Schedule No. 3, Rec. p. 107, test. McBride, Rec. pp. 133, 134.

The results of the examination on this branch of complainant's case, relating to the alleged use of the funds of the Bank, in purchasing the property of the partnership and for its other purposes, epitomized are as follows: The cash payments aggregating $15,499.96 on three purchases of real estate detailed in the bill were made exclusively with the funds of the partnership no portion of which were derived from the Bank.

Two of the time payments on two of the purchases of Real Estate and one cash payment on another purchase, detailed in the bill, aggregating $15,499.96, were made out of and from a mingled fund made up of overdrafts on the Bank and the funds of the partnership derived from its earnings, capital and other sources. The remaining payments on the Real Estate of the partnership, and on other property acquired by it, as well as its indebtedness for other items, detailed in Schedule No. 3, due and

unpaid when the partnership property was acquired by the New Orleans and Carrollton Railroad Company, were made by that Company out of its own means exclusively, except that at the close of the partnership there was on hand the balance already stated, of the mingled funds of overdrafts and partnership earnings and resources.

And so with respect to the alleged use of the money obtained from the Bank for the current expenses of the partnership, these expenses were defrayed exclusively with the resources of the partnership, up to September 6, 1866, when the overdrafts began, and from that date to the close of the partnership, with the mingled funds already stated.

But in no purchase of any specific property of the partnership, real or personal, were the funds of the Bank exclusively used, nor in which can these funds be traced or identified; but the funds obtained by overdrafts from the Bank were mixed with other funds, with which combined funds some payments were made on account of the purchases of the Real Estate of the partnership, and with these mixed funds also some of the partnership expenses for a portion of its existence, were defrayed, as stated in Schedule No. 2, specially referred to in connection with this part of complainant's case.

In April, 1867, the comptroller of the currency directed an examination of the affairs of the First National Bank. The result of that examination was that the Bank passed into the hands of a Receiver,

under the provisions of the National Banking Act.

At the time of this examination, May was assistant Treasurer of the United States in New Orleans, and the attention of the officers of the Government was then directed to his accounts as Treasurer, and it was then discovered that he was largely indebted to the United States, in part liquidation of which indebtedness, as already stated, he conveyed to the United States his interest in the partnership property.

In the conveyance from the United States to Hernandez, Binder and Bonneval, there is an allusion to the overdraft on the Bank, and a stipulation on the part of the United States to indemnify the purchasers against any claim on that overdraft, it being denied that it was a debt of the partnership. Rec. pp. 37, 41.

The bill on this state of facts charges knowledge on the part of the United States, through its officers and on the part of all the purchasers from the United States, and on the part of the New Orleans and Carrollton Railroad Company, of the indebtedness to the Bank by the partnership, of its origin, and of the insolvency of May, Graham and Beauregard. The bill charges that the transfers were all void and in fraud of the rights of the Bank as a partnership creditor, and that to the knowledge of all the parties. See Bill, Rec. pp. 77, 78.

The scope of complainant's bill on this state of facts has already been to some extent indicated, in stating

the facts pertaining to some of the alleged grounds for relief. The positions assumed by complainant, substantially are that the misapplication of the funds of the Bank to the uses of the partnership, in the acquisition of its Real Estate and in carrying on its business, creates a trust in favor of the Bank on all the property of the partnership and binds that property for the payment of the money obtained from the Bank, the money having been obtained by overdrafts from the Bank in which two of the partners were officers, the influence and official position in the Bank of both, being charged in the bill, and one being charged specifically with fraud and an abuse of his trust in "taking" from the Bank the amount of the two credits, which appear in the partnership account. Rec. p. 76.

Next, it is claimed by the complainant, that the Bank as a creditor of the partnership, has a lien on all the property of the partnership for the payment of the indebtedness due to it, which lien it is claimed by the complainant is not divested by the transfer of the partnership property; (Record p. 77,) then the complainant takes the position that it was unlawful for May to convey partnership property for his individual debt. Rec. p. 77.

The ground is also taken that the insolvency of May, Graham and Beauregard, also alleged, at the dates of the various transfers, the existence of the debt to the Bank, a partnership creditor, the fact that it was left unpaid and the property

conveyed beginning with that of May, for his individual debt, with the knowledge on the part of the purchasers, alleged in the bill, avoids all these transfers so far as the Bank is concerned, and finally, the bill charges that the New Orleans and Carrollton Railroad Company has bound itself for the debt. The bill seeks the recovery of the indebtedness, and to subject for its satisfaction the property of the partnership, acquired by the New Orleans and Carrollton Railroad Company. The answer controverts all these grounds of relief. Bill Rec. pp. 73 to 81. Answer Rec. pp 92, et seq.

There was the general demurrer to the first bill filed, which was sustained, with leave to amend. Rec. p. 1, 67, 73. Then another bill was filed, substantially the same as the first, except, that the last bill averred the insolvency of Beauregard, May and Graham, and the inability to make the debt out of them. Rec. p. 78. On this bill, answer and proofs, the decree was against the complainant. Record p. 231, 1st Wood's Report, p. 125. And complainant prosecutes this appeal.

ARGUMENT.

It is proposed first to address attention to the ground of relief assumed on behalf of the complainant, that the amount sought to be recovered, was wrongfully taken from the Bank, of which the complainant is Receiver, and applied in the purchase of the property of the partnership, that an implied trust in favor of the Bank is thereby created, with the

right to follow the property into the hands of the New Orleans and Carrollton Railroad Company, and make it liable for the debt to the Bank, created by the overdrafts. The theory of the complainant in this respect, seeks support on a familiar ground of equity, but which has no application to the facts of this case, and affords no basis whatever, for the complainant's pretensions. This branch of equitable relief, is thus stated :

"On similar grounds, whenever the property of a party has been wrongfully misapplied, or a trust fund has been wrongfully converted into another species of property, if its identity can be traced, it will be held liable in its new form, liable to the rights of the original owner. The general proposition which is maintained, both at law and in equity upon this subject, is that if any property in its original state and form is covered with a trust in favor of the principal, no change of that state and form can divest it of such trust, or give the agent or trustee converting it, and those who represent him in right, (not bona fide purchasers for value,) any more valid claim respecting it, than they respectively had before such change."

2d Story's Equity Jurisprudence, S. 1258.

First, as to the alleged fraud connected with the obtaining the money of the Bank for the partnership. It was by May's directions that the overdrafts were made. He directed Proctor, the Treasurer of the Company, to overdraw the partnership account,

when needed, and he, May, would make it all right with the Bank. Test. Proctor, Record p. 144, 145. Proctor's note, Record p. 187. Beauregard had no intercourse or communication with the officers of the Bank, in reference to furnishing the partnership with money, "was careful not to have any, because it did not come within his province," (Record p. 137,) had no control over the financial department of the partnership, (Rec. p. 136,) confined himself to his own department, (Rec. p. 137,) i. e., the superintendence and management of the road; he had associated himself with May and Graham, because he deemed them rich men; (Rec. p. 128) he left it to them to provide the means, which, by the agreement, they bound themselves to furnish; the checks of the partnership were signed by its Treasurer, Proctor, to whom, May's directions was to keep on and draw what he required. Beauregard "may have signed some checks at the time we were overdrawing," (Record p. 146.) On this point of May's complete control of the finances of the partnership, the best illustration if more was needed, is to be drawn from the testimony.

Q. In what mode was the partnership of May, Beauregard and Graham enabled to obtain money from that bank upon these checks?

A. By an arrangement made between Mr. May and the treasurer of the company. He authorized him to overdraw when there was no balance, and promised that he would make it good.

Q. Who was the treasurer of the company?

A. Mr. S R. Proctor, who is still treasurer.

Q. Were you consulted, or had you any knowledge of that arrangement at the time ?

A. I was so informed.

Q. Were you informed before the arrangement was made or after the arrangement was made ?

A. After the arrangement was made.

Q. Was that arrangement made in consequence of any efforts or endeavors made by yourself ?

A. None at all. I did not trouble myself at all about the financial department.

Q. With whom did that arrangement originate ?

A. That I cannot say. Not with me.

Q. In reference to the transaction of the First National Bank in entering up the credit of one hundred and twenty-five thousand dollars to this partnership in March, 1867, was that credit entered up in consequence of any effort made by yourself ?

A. No, sir.

Q. Had you any knowledge of that credit being entered at that time ?

A. I had it about that time, but that was a matter that I considered entirely outside of my legitimate duties ; and I did not know the condition of those gentlemen, and I did not trouble myself about it.

Q. By whose efforts or by whose means was that credit entered ?

A. By Mr. May's, I have always understood.

Q. Were you made aware at the time of the mode in which he proposed to get that credit?

A. All that I know on the subject is that the treasurer told me that he was authorized by Mr. May to overdraw, and that he [May] would make the overdraft good.

Q. Then you had no knowledge of the mode in which May got that credit from the bank.

A. Not in the least. I thought Mr. May and Mr. Graham rich men all the time. I had not the least idea of the arrangement they were making with the bank. That was the reason I went into partnership with them. I had no means of my own and they were reported to be rich men, and, of course, I made an arrangement with them, as I could have done with other parties.

Q. Was any proposition made to you by either one of your partners that you should become personally responsible for those moneys drawn from the bank?

A. No, sir.

Q. Did you ever make yourself responsible in any way unless the law made you responsible?

A. No, sir.

Q. How did you consider the money obtained from the First National Bank; how did you treat it?

A. I considered that it was money that Mr. May had furnished to the concern, or that he was bound to furnish to the concern. Test. Beauregard, p. 137, et seq.

So in reference to the influence in the Bank that procured the payment of the checks, it was due to the direction and control of May, which seems at all times to have been supreme. The subordinates reported the overdrafts, but the President, (May,) said it was all right and to go on and pay the checks regardless of the state of the account. Helm, p. 210, the Book-Keeper of the Bank, testifies:

Q. What do you know about the instructions which were given in regard to the account of Beauregard, lessee? (i. e. the partnership account.)

A. When the first overdrafts were made I reported.

Q. To whom?

A. To the president at that time. I do not know who was president at that time, whether it was Mr. May or Mr. Graham, but they told me it was all right.

Q. Did you report again?

A. I reported several times that the account was overdrawn. I was always answered "that is all right." Then I did not report any more. I put the overdraft in a little book that I had expressly for the purpose of putting overdrafts in. In that book I put every morning the accounts that were overdrawn and the amount of the overdrafts, and the president looked at that book every day. Those he wanted me to notify I notified.

Q. Did he ever ask you to notify Beauregard, lessee?

A. Never.

Q. How long did that continue in that way?

A. Well, from the first overdraft until about the end of the bank, when the bank failed.

Q. During the whole of this time who was president of the bank?

A. Mr. May, and afterwards Mr. Forbes.

Q. Did Mr. May examine this book, showing the overdrafts that you speak of?

A. Yes, sir; I showed him that book. I had that book in my desk open every day so that they could see it.

Q. Did he ever give any reasons to you or to any one why the account was allowed to be overdrawn?

A. No, sir; all I know was that I had to pay his checks.

The two credits, as has been stated, were entered by May's direction. When the note of $40,000 was drawn by May, in Beauregard's name, whose power May then held, (Rec. p. 140) Beauregard was absent, and had no knowledge of it till his return. Rec. p. 128. May drew the bill of exchange on Graham for $125,000, and the entry of that credit in the partnership account, was by his, May's direction. Rec. p. 205, 196. The statement of one of the witnesses, (Rec. p. 196, 200,) that Beauregard was sent for and notified of this transaction, is an unauthorized inference of the witness, (Rec. p. 196) and appears to

be based on the circumstance, that he saw Beauregard coming out of the office of the President of the Bank. Beauregard's testimony on this point, is that he had no connexion with it. Rec. p. 138. And in this connexion it is appropriate to refer to the allegation in the bill, that arraigns May for delinquency in his duty as an officer of the Bank, in taking its money. Rec. p. 76, 78.

The alleged fraud then in obtaining the money of the Bank, to whatever extent it is to be deemed sustained, involves May alone, of the defendants, an officer of the Bank, as a participant. By his direction, the overdrafts were made, and by his influence in the Bank they were procured to be paid, but the bill proceeds on the theory that the alleged fraud in obtaining the money of the Bank affects the other defendants, because of the knowledge on their part at the dates of the various conveyances, averred in the bill, of the indebtedness, of its origin, that the indebtedness was unpaid, etc. Bill Record pp. 77, 78. If any lien for the indebtedness existed in favor of the Bank, a ground taken in the bill, and to be noticed hereafter, then with the knowledge imputed to the defendants, it might be contended that they could not hold the property free from the asserted lien, but no other result in respect to liability, could follow.

But in this trust implied from the misapplication of funds and their conversion into other property, the law permits the owner to follow the property

into which his funds have been converted, and the property will be held liable to the claim of the owner, if the identity of the funds can be traced; "the right ceases only when the means of ascertainment fail, which of course, is the case when the subject matter is turned into money and mixed and confounded in a general mass of property of the same description." See 2d Story's Equity Jurisprudence, Sections 1258, 1259. Does not the language of the text plainly point to that mixture or "confounding" of the funds of the Bank, with those of this partnership, and to the indiscriminate use of the mass of these mingled funds for the business of the partnership? Is not the complainant in the precise predicament stated in the text, when the funds claimed to have been misapplied, cannot be traced in any specific property or thing, and the right of the owner, now under consideration, completely lost? The answer to these enquiries is furnished by the facts and is conclusive against the complainant's demand.

As already exhibited, the partnership had large resources other than the funds obtained from the Bank. Before any overdrafts, the partnership had received and expended of its own proper means, one hundred and fifty-three thousand, two hundred and sixty-three dollars and ninety-five cents, (Rec. pp. 104, test. McBride, p. 132,) and part of this large sum had been expended in making the cash payments on three of the purchases of the Real Estate, acquired by the partnership, and the residue of these

means had been expended for expenses of reconstructing the road and other items of expenditure.

During the period of the overdrafts, the partnership derived from its earnings, capital and other sources, one hundred and seventy thousand, seven hundred and fifty-six dollars and fifty-eight cents, [Rec. pp. 106,] and from overdrafts, two hundred and thirty-seven thousand and eight dollars and eighty-seven cents. But these receipts from earnings, capital and other sources, were blended in the treasury of the partnership, with the overdrafts, and the whole expended in some of the payments on the Real Estate, that is to say, in two of the time payments, and in one cash payment on three of the purchases of Real Estate, detailed in the bill, [Rec. pp. 105, 106, 107,] and the rest of these mingled funds was expended for expenses of reconstruction and for other purposes.

And finally the indebtedness for its purchases of Real Estate, and various items, detailed in Schedule No. 3, [Rec. p. 107-8,] amounting to the large sum of $117,725.80, unpaid at the close of the partnership, was all paid by and with the money of the New Orleans and Carrollton Railroad Company, which had acquired the property for value, [Rec. pp. 133, 134,] except that the partnership had on hand at its close, of the mingled funds referred to, a residue of $4,433.31, dollars, insignificant in respect to the $117,725.80 it then owed.

It thus appears that with the exclusive means of the partnership, its Real Estate was paid for in part, another part of the purchase price was paid with the means of the New Orleans and Carrollton Railroad Company, and the most that can be said for the complainant on this branch of his case, is that out of the mass of funds of the Bank, procured by overdrafts, mixed with partnership means, some of the payments for the Real Estate were made. And so of the other expenses of the partnership, the funds of the Bank, obtained by overdrafts, mixed with other funds, were used for a period, but up to September 6th, 1866, when the overdrafts began, the partnership was carried on with its means exclusively. The bill itself only claims that all or nearly all the money expended by the partnership for its purposes, including the purchases of Real Estate, was obtained from the First National Bank, and with that money the business of the partnership was "mainly" carried on.

The precise significance to be attached to the terms used in the bill, to describe the use of the money of the Bank, in the purchase of the property of the partnership and in conducting its business, is made apparent in the facts stated. The right asserted by the complainant in this respect, derives no support from such a use of the money of another as is expressed by "mainly" or "all or nearly all," but it must be that kind of use which admits of the identification of the funds of the Bank, as the funds with which the price was paid of the particular property

on which the right in question is asserted. 2d Story's Equity Jurisprudence, sec. 1258-9.

There is no specific property or thing involved in this litigation, to which the complainant can point, and with all the aid afforded by this record, identify the funds obtained from the Bank, as those with which the purchase price of that property or thing was paid. This he must do, to maintain the direct liability he asserts here, of the property for his demand. In view of that "confounding," so conspicuously exhibited by the record, of the funds obtained from the Bank, with the funds of the partnership, in one common mass, indiscriminately employed for varied objects of expenditure, and used to a limited extent only in the payments for the Real Estate, detailed in the bill, it is manifest that the right on that Real Estate or other property, asserted by complainant on the ground now under consideration, completely fails. It does not suffice to create the trust in favor of the owner of misapplied funds, that the property he seeks to follow has been purchased in some sort or to some extent with his money. When the funds have been confounded with other funds and the purchase made with the combined mass, equity does not view the property as representing the misapplied funds, so as to make it specifically liable to the demand for the funds misapplied, still less does the right exist, where, as in this case, only some of the payments for the property have been made with mingled funds, and the residue of the

payments with the means of others. Under this state of facts, the complainant has no other legal attitude, except as a creditor of the partnership, for the funds obtained by the overdrafts and used for general partnership purposes, and he is without the semblance of the specific right based on the alleged trust he claims. Of this view was his Honor Judge Bradley, with whose language on this branch of this case, this asserted ground of the complainant, is dismissed from further attention.

"The ground of relief, namely, that the property belongs to the Bank, or is held in trust for the Bank, because purchased with the money of the Bank, is clearly untenable. Beauregard & Co., were engaged in business which required a considerable amount of funds and became large borrowers of the Bank. With the money thus obtained, and with other money derived from the proceeds of their business and other sources, they paid expenses, made repairs, bought cars, horses and other property, and found themselves at the end of the year, largely behind. The Bank is their creditor. and considering May's peculiar relations, it has cause to make a charge of official misconduct against him ; but how does that entitle the Bank to claim the property of the firm as its own ? The identity of the property purchased or procured with the money of the Bank, cannot be ascertained. It was mingled with the other money of the firm, and the whole mass was used indiscriminately for all the purposes of the Company. Can

the receiver point to a single car or horse or lot of ground, and say, "This was purchased by the money of the Bank?" Other creditors of the firm have become interested, and nothing but inextricable confusion would ensue if any such claim were allowed to prevail. Where trust property is converted, and the proceeds can be identified, it may undoubtedly be followed by the *cestui que trust* and brought back to be appropriated to its original purposes. Money of a Bank embezzled or misappropriated by its officers may undoubtedly be followed up in the same way, if the money itself, or its proceeds, can be identified, and no innocent person is injured by its recovery. But supposing the money now in question could be regarded as thus misappropriated, the impossibility of identifying it, and of doing justice to third parties, renders the application of the principle impracticable." 1st Wood's Report, p. 126.

2d. Now is there any better support for the position assumed in the complainant's bill, that the Bank as a creditor of the partnership has a lien on the partnership effects for the payment of the indebtedness, and that the partnership property could not be conveyed so as to deprive the Bank of the asserted lien. The only lien on the partnership effects, in which the creditor has any interest or by the exercise of which he can be benefitted, is the lien which exists in favor of the partners, and by which they can compel the application of the partnership effects to the satisfaction of its debts. The lien belongs to the

partner, not to the creditor. The creditor can only have the benefit of the lien when the partner himself exercises it, and then the benefit derived by the creditor, is not secured by any title he has, but by virtue of that lien which the partner himself possesses. The bill mistakes that right which belongs to the partner, as a title pertaining to the creditor, in his own independent right. That the creditor of the partnership has no such lien, is made plainly apparent by the authorities. Thus Justice Story in commenting upon that class of cases where the whole partnership property is conveyed to one of the partners, (but the principle as will be seen, is not limited to that class of cases, but is of general application,) states the law thus: "Upon the dissolution, "it is competent for the partners to agree that the "joint property of the partnership shall belong to one "of them, and if this agreement be bona fide and for "a valuable consideration, it will transfer the whole "property to such partner wholly free from the claims "of the joint creditors." The author excepts however, cases of dissolution by forfeiture for felony or by bankruptcy. "The reason of this is obvious. While "the partnership is solvent and going on, the creditors "have no equity, strictly speaking, againt the effects "of the partnership. *Neither have they any lien on "the partnership effects for their debts.* All they can "or may do, is to proceed by an action of law for their "debts against the partners, and having obtained "judgment thereon, they may cause the execution to

"be levied on the partnership effects or upon the sep-
"arate effects of each partner, or upon both. There
"being then no lien and no equity in favor of the
"creditor, against the partnership effects, until such
"execution is issued *and levied thereon, it follows*
"*that those effects are susceptible of being legally*
"*transferred, bona fide, for a valuable consideration,*
"*to any persons whatsoever, as well to the other part-*
"*ners as to mere strangers.*"

Story on partnership, S. 358.

Speaking of the lien, the author further states: "But then the equities of the creditors are worked out through the medium of the partners. They have indeed, no lien, but as has been said they have something that approaches to a lien, of which, *with the assent of the partners entitled to the lien*, they may avail themselves in a Court of Equity against the partnership effects." Again: "It is thus through the operation of administering the equities between the parties themselves, that the creditors have the opportunity of enforcing this quasi lien." Sect. 360. And further the author speaks of the right of the joint creditors as a derivative and subordinate right, "under and through" the lien and equity of the partners, and available only to the creditors when there is a dissolution by the death or bankruptcy of the partners. S. 361. That is to say, the preference to partnership creditors is a rule of distribution (Civil Code, Art. 2823) which courts will observe when jurisdiction is vested by death or bankruptcy, or by

seizure under execution of the partnership effects, or when the partner himself invokes the lien. But as to the creditor, these principles leave him no ground on which he can assert as his own independent right, the lien which he only enjoys when it is exercised by others to whom it belongs, or when by seizure under execution, and in the contentions arising threfrom, or by death or bankruptcy, the courts having jurisdiction of the partnership property and its distribution, recognize the preference of the firm creditors. So the authorities all treat this lien which is assumed in the bill as the basis in part of complainant's demand, as "a dependent and subordinate right," which the creditor can acquire only through others, and which he of himself can neither originate or claim. The partnership creditor can obtain a lien on the partnership property, through his own action only by issuing an execution and levying on the effects. Story on partnership, S. 361, and authorities at foot. Gray's Edition, 1868.

Now in this case neither Graham or Beauregard raised any objection to the assignment by May of his interest in the partnership property, for his individual debt. In fact, Graham himself assigned his interest for his individual liability, (Rec. p. 6, 54, 228) and as to Beauregard he became associated with those who acquired May's interest. Rec. p. 47. The case then, is, that of all of the partners in effect, assenting to the disposition of the firm property, and a credit-

did not invoke but waived that lien, which, if it had been claimed, would have been of no service under the facts shown by the Record.

The argument to show that the partnership creditor has no lien for his debt on the partnership effects, as is assumed by the complainant in the bill, has close relation to and disposes of another position taken by him, that the transfer by May was in fraud of the rights of the Bank, because it conveyed partnership property for his individual debt. For what is the alleged fraud, disconnected with the grounds for relief already considered? The transactions on which the asserted fraud is founded, are all singularly deficient of even the semblance of the elements of fraud, in the ordinary or legal signification of the term. There was no artifice or concealment, or design to defraud, unless a design of that nature, usually masked or at least suppressed, is to be deemed implied in acts done openly and spread upon the public records. There was no fraud, unless it is constructive arising from the nature of the consideration that is the individual indebtedness of May, for which the transfer was made. The issue of fraud, is thus simplified and the discussion brought back to the question already discussed, of the existence of any right in the partnership creditor upon the partnership effects, under the facts shown by the record, for if no such right existed, there can be no fraud. The language of the text already so largely quoted from ought to be decisive against the preten-

tensions of a creditor, whose complaint is simply that the partnership property has been conveyed for the consideration of individual indebtedness. "There "being then no lien and no equity in favor of "the creditor against the partnership effects, until "such execution is issued and levied thereon, it fol- "lows that those effects can legally be transferred bona "fide, for a valuable consideration, to any persons "whatsoever, as well to the partners, as to mere "strangers." Story on Partnership, S. 358, Gray's Edition, 1868, citing in connection, Exparte Ruffin, 6 Vesey, 119, and a large array of authorities.

In 21 Conn., p. 130, it was held that although partnership creditors were entitled to priority of payment as against individual creditors, out of partnership funds as long as they continued partnership funds, yet they have no specific lien thereon and while the partnership remains and its business is going on *whether insolvent or not*, there is no legal objection to a bona fide distribution of the partnership funds among the members of the firm, or a bona fide change of them from joint *to separate estate.*

In Sigler & Richey vs. Knox County Bank, decided by the Supreme Court of Ohio, 8th Ohio State Reports, p. 511, the partnership property was conveyed in part for the individual indebtedness of the partners, and in part for the assumption by the purchaser, of certain firm liabilities, thereupon a bill was filed by a judgment creditor on his own behalf, as well as on behalf of such other creditors as might

make themselves parties, alleging that the transfer was fraudulent as to them, and seeking to subject the firm property in the hands of the purchasers, to the satisfaction of the debts of the firm creditors, excluded "by the transfer, from any participation therein," and the bill also averred that the purchasers held the partnership effects in trust for *all* the creditors of the firm. The decision was against the complainants. The court held there was no actual fraud, that the purchasers were not "mere volunteers, but being sureties of the firm and *creditors of one of the partners*, as diligent and bona fide creditors had the right to secure themselves, even if they knew the firm was hopelessly insolvent." "Their object does not seem to defraud others but to secure themselves." The partners had the undoubted right to secure those who had befriended them to the extent at least of the joint obligation now is it says the court denied, but that in ordinary cases, the partners *all* assenting thereto, a valid appropriation may be made of the joint assets, to the separate debt of one of the firm. The court then disposes of the lien asserted for the partnership creditor, decides they have no such lien, that his claim, if any, must be based on the right of the partners, "that if the partners acquiesced and agreed to the appropriation to the separate creditor, the joint creditor could not thereafter object." See also 11 Ohio, 394.

It is true that in the cases cited, the transfers complained of by the partnership creditor, were made by

the firm, or at least "all the partners assenting," but the plain principle affirmed by these decisions, is that if any objection is raised to such transfer, it must be by the partners and cannot be made by the creditor. In this case, the concurrence of May and Beauregard in the manner stated, the absence of complaint from Graham and his inaction, except the transfer of his alleged interest for his individual debt, gives to the transfer, the equivalent of acquiescence, or at least leaves no room for the intervention of a creditor who can stand only on the right of the partner, asserted by him for the benefit of the creditors. Here no such right is asserted by any of the partners, they have all concurred in methods of disposal, which though they might lead to contentions between the assignees of the interests of the partners, (See 11 Wallace, p. 624,) clearly exclude the partnership creditor from any basis of legal complaint, and this feature of the complainant's bill, disappears as an element of controversy. The opinion of Mr. Justice Bradley on this branch of the case, against complainant, is at p. 130 of 1st Wood's Report, to which reference is made. It will be borne in mind too, that the conveyance, beginning with that of May, resulted in liquidating partnership debts to the large amount already stated.

It will not escape attention also, that the bill is filed by one creditor of a partnership, seeking the application of partnership property, for his debt, without any reference to the rights of others. This itself would

defeat the relief, which if due at all, belongs to a class.

At the time the Bank closed its doors, May was a creditor on his deposit account for $315,779.64. Rec. p. 154, 130. Supp. ans. p. 124. He was debtor for the money obtained from the Bank, in the sum of $237,008.84. He was endorser on certain notes, and was acceptor of a bill of exchange, held by the Bank, but the notes and bill had not matured when the Bank failed. Meig's test. p. 153-4. So when the Bank failed, the indebtedness to May on his deposit account was greater than his indebtedness for the overdrafts. Compensation takes place between debts equally due. Civil Code, Arts. 2208-9. One was an offset to the other, for both were matured when the Bank failed. Even deducting May's unmatured obligations as acceptor and endorser, he was still the Bank's creditor. Rec. p. 153, 154. May undertook to assign to the United States the amount to his credit in the Bank. Rec. p. 24, 120. The United States took possession of the cash assets of the Bank, to the extent of $80,000, and credited it on the check. Test. Knox, Rec. 121. It is submitted that May could not check for more than the difference between the two accounts, that is, the difference between his deposit account and his indebtedness for the $237,008.89. See Civil Code, La. Arts. 2207-8-9, et seq. Morse on Banks and Banking, p. 34. Bank vs. Fowler, 10 Robinson, La. Rep. p. 200. And it is equally clear in the then condition

of the Bank, the 11th May, 1867, of actual insolvency, the United States as his assignee, holding his check, could not claim the payment of that check, for all creditors stood on an equal footing and were required to await dividends in the usual course. 2nd Brightly's Digest, p. 70, S. 54. The United States as holder of May's check had no priority in the assets of the Bank.

But the feature to which the attention of this court is principally directed in respect to these transactions, is that the amount due the Bank by May, exceeded the amount due by him for the overdrafts. The Bank had the right to treat the indebtedness sued for in this case, as due by May, and to make it an offset against his deposit account. Had that course been taken, this suit would not have been brought. The Bank would have covered itself, by treating as cancelled, the indebtedness to May as a depositor. For surely the assignment by May of his deposit account to the United States, was ineffective to confer any right on the United States, except for the difference between the two accounts, and a dividend on that difference in due course of liquidation of the Bank. Suppose on this state of facts, May had sued the Bank, solvent or insolvent, for the full amount of his deposit account. Could not the Bank with all due regard to the principles announced in 1st Otto, p. 134. have urged successfully as a just offset against his demand, the debt sued for in this case, created by his "taking the money in violation of his duty to the

defeat the relief, which if due at all, belongs to a class.

At the time the Bank closed its doors, May was a creditor on his deposit account for $315,779.64. Rec. p. 154, 130. Supp. ans. p. 124. He was debtor for the money obtained from the Bank, in the sum of $237,008.84. He was endorser on certain notes, and was acceptor of a bill of exchange, held by the Bank, but the notes and bill had not matured when the Bank failed. Meig's test. p. 153-4. So when the Bank failed, the indebtedness to May on his deposit account was greater than his indebtedness for the overdrafts. Compensation takes place between debts equally due. Civil Code, Arts. 2208-9. One was an offset to the other, for both were matured when the Bank failed. Even deducting May's unmatured obligations as acceptor and endorser, he was still the Bank's creditor. Rec. p. 153, 154. May undertook to assign to the United States the amount to his credit in the Bank. Rec. p. 24, 120. The United States took possession of the cash assets of the Bank, to the extent of $80,000, and credited it on the check. Test. Knox, Rec. 121. It is submitted that May could not check for more than the difference between the two accounts, that is, the difference between his deposit account and his indebtedness for the $237,008.89. See Civil Code, La. Arts. 2207-8-9, et seq. Morse on Banks and Banking, p. 34. Bank vs. Fowler, 10 Robinson, La. Rep. p. 200. And it is equally clear in the then condition

of the Bank, the 11th May, 1867, of actual insolvency, the United States as his assignee, holding his check, could not claim the payment of that check, for all creditors stood on an equal footing and were required to await dividends in the usual course. 2nd Brightly's Digest, p. 70, S. 54. The United States as holder of May's check had no priority in the assets of the Bank.

But the feature to which the attention of this court is principally directed in respect to these transactions, is that the amount due the Bank by May, exceeded the amount due by him for the overdrafts. The Bank had the right to treat the indebtedness sued for in this case, as due by May, and to make it an offset against his deposit account. Had that course been taken, this suit would not have been brought. The Bank would have covered itself, by treating as cancelled, the indebtedness to May as a depositor. For surely the assignment by May of his deposit account to the United States, was ineffective to confer any right on the United States, except for the difference between the two accounts, and a dividend on that difference in due course of liquidation of the Bank. Suppose on this state of facts, May had sued the Bank, solvent or insolvent, for the full amount of his deposit account. Could not the Bank with all due regard to the principles announced in 1st Otto, p. 134. have urged successfully as a just offset against his demand, the debt sued for in this case, created by his "taking the money in violation of his duty to the Bank, and in fraud of its rights," (Bill p 76) or

to state it in another form, by his direct influence in procuring the payment of the overdrafts? Can the attempted assignment of his deposit account to the United States, give his assignee greater rights than May had? Notwithstanding his assignment, in point of fact, in the liquidation of the Bank, is not this debt sued for, to be treated as cancelled by the Bank's debt to May? As between the Bank and May, has not compensation taken place? Why then this suit against the Company when the Bank owed May when it was brought and still owes him more than enough to cover the debt now sued for, throwing out of view his check in favor of the United States, wholly ineffective to defeat the right of offset on the part of the Bank. The defence arising out of the facts on this branch of the case, is in itself sufficient, if the other grounds were not ample.

Finally, the last ground taken in the decision of the Circuit Court, that the complainant had not exhausted his legal remedies, is itself sufficient, but the defences, irrespective of that ground, are conclusive to arrest forever, this litigation, by the affirmance of the decree of the Circuit Court, in favor of defendants.

The United States itself has an obvious interest in maintaining the rights of the purchasers against this demand and intervened. See Interpleader of United States, Record, p. 108.

Henry C. Miller
Sol for defdt's &c
N. H. Ranney
RMC

Supreme Court of the U. S.

October Term, 1878.

No. 167.

FRANK M. CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,

vs.

G. T. BEAUREGARD, ET AL.

Appeal from the Circuit Court of the United States for Louisiana.

JOHN A. CAMPBELL,
Sol. for Appellees.

Murphy & Co., Printers, Publishers, Booksellers & Stationers, Balt.

Supreme Court of the United States.

October Term, 1878.

No. 167.

FRANK M. CASE, RECEIVER OF THE FIRST NATIONAL BANK OF NEW ORLEANS,

vs.

G. T. BEAUREGARD, ET AL.

Appeal from the Circuit Court of the United States for Louisiana.

I.

THE OBJECT OF THE SUIT.

1. The Receiver of the First National Bank of New Orleans the 10th of July, 1869, commenced this suit in chancery to collect an account for the sum of two hundred and thirty-seven thousand dollars and eighty-nine cents, consisting of monies advanced by the Bank to a partnership composed of G. T. Beauregard, A. C. Graham and T. P. May, in the years 1866 and 1867 before the failure of the Bank on the 13th of May, 1867. The partnership had ceased to exist before this suit was commenced, was entirely insolvent, and all of the partnership effects had been transferred by a series of conveyances which, the bill charges to have been prejudicial to the rights of the Bank and the Receiver. The

bill impetrates the Court to set aside these conveyances, to place the property in the hands of its marshal to be sold, and the payment of the price to the plaintiff as Receiver to satisfy his claims. The noxious conveyances consist in three assignments and transfers made by Thomas P. May, to officers or agents of the United States for the payment of a debt due to the United States for one million and seventy-six thousand seven hundred and ninety-two dollars and twenty nine cents received as Assistant Treasurer of the United States never accounted for. (Rec., p. 230.)

2. The acts of sale of the United States to the defendants, Bonneval, Bender and Hernandez, of this property;

3. The act of transfer of the same property to the New Orleans and Carrollton Railroad Company by Beauregard, Bonneval, Bender and Hernandez. The plaintiff prays for an injunction against the parties last named from making any disposition of shares of stock in the New Orleans and Carrollton Railroad Company which formed the consideration paid to them on account of the last transfer.

The amended bill amplified some of these charges in the original bill and applied the epithet of fraudulent to some of the transactions but does not materially change the object of the bill or the statements. (Record, pp. 1, 8.) Amended bill, 70–81.

II.

STATEMENT OF THE FACTS OF THE CASE.

The New Orleans and Carrollton Railroad Company in Louisiana, the 12th of April, 1866, granted a lease to the defendant, Beauregard, of its railroad and railroad property for a term of twenty-five years commencing on the 16th of April, 1866.

The object of lessor and lessee was to change the character of the road to a city passenger road, and to use animals instead of steam as the motive power. It had been conducted as an ordinary railroad for transportation of persons and property by

locomotives propelled by steam. There was to be a sale by the lessee of the superfluous property, and the purchase by him of the necessary equipments, and he was to make additions and improvements as required. The lease makes provision for these. The lessee was to perform all of the obligations of the company under their charter, to bear the responsibilities incident to the management, and to pay an annual rent in monthly instalments. The railroad, with all of the additions and improvements, at the end of the term, was to revert to the corporation and if the rent was not paid the company might rescind the lease without account for the additions. There was to be no transfer of the lease and no underleases without the written consent of the Company. (Record, pp. 9, 13, Exhibit. A.)

On the 18th of April, 1866, Beauregard, May & Graham defined their relations. This lease was for "the joint account." Beauregard was to conduct and manage the undertaking, appoint the assistants, deposit monies in the First National Bank and to have an annual salary of $5,000 payable monthly in instalments. May and Graham severally agreed to furnish in instalments one hundred thousand dollars within four months; and in addition fifty thousand dollars each in five months after, if required, making $300,000. These sums with interest at the rate of eight per cent. annually were to be refunded before any dividends could be paid. After this had been done, the parties were to divide the net profits equally. (Record, p. 13.) There was paid within three months by these parties, the sum of $88,000, and subsequently $43,474. May was the President of the First National Bank in 1866 and 1867 and all the time a director and a large shareholder. He obtained an open credit at the Bank, and the checks of the Treasurer of this firm were received for the sum of $237,008.89 between the 6th of September, 1866 and the 13th of May, 1867, the day when the First National Bank was closed, in excess of deposits. These checks were drawn by instructions from May and upon his promise to make

them right. The arrangement was irregular and a partiality conceded to him by the affairs of the Bank, commencing in 1866 under the presidency of Graham. None of this money has been paid to the First National Bank. The receipts from the railroad were deposited daily with the Bank. At one time May deposited a demand note drawn by him as attorney for Beauregard for $40,000 with the Bank as cash, and the amount was credited in account. At another time he drew a draft upon A. C. Graham for one hundred and twenty-five thousand dollars and this was credited as cash. Neither piece of paper was paid at maturity and both were held by the Bank when it failed and both were then due.

The explanations are to be found in the testimony of Forbes, Record, p. 204; Meig, Record, p. 194; Beauregard, Record, p. 136; Procter, Record, p. 142.

III.

THE DISPOSITION MADE OF THE PROPERTY OF THE PARTNERSHIP OF BEAUREGARD, MAY AND GRAHAM.

1. The exposure of the embezzlement of the public money of the United States by May as Assistant Treasurer, and the failure of May and of Graham were simultaneous.

May's debt to the United States as Assistant Treasurer was $1,076,792.29. The 14th of May, 1867, he assigned to John Jay Knox, Special Agent of United States, among other property his cash balance in bank, $315,779. Fourteen hundred and ten shares of its stock, $141,000. The interest of May in the Carrollton Railroad Company, $480,000, and bound himself to make suitable conveyances. (Record, pp. 230 and 24.)

On the 16th of May he conveyed the interest of himself and of Graham in the Carrollton Railroad, to the Treasury Agent Knox. He acted under a power of attorney which Graham had

left with him of a very comprehensive character, and states in his conveyance that he is the owner of Graham's share. The interest in the railroad is valued at $480,000, and May is to be credited with all that should enure to, or be received by the United States from the proceeds of the sale or other disposition. (Record, pp. 24, 26.)

2. The agent of the United States on the 21st of August, 1867, sold this property to Bonneval, Bender and Hernandez. His conveyance in some particulars being unsatisfactory at the Treasury Department, others were drawn. The three conveyances are Exhibits I, J, K. (Record, pp. 39, 42, 43.)

All of the rights and interests of the United States are transferred to these three persons, each having one-third part; the purchasers assume the liabilities due and owing by Graham and May, as lessees for account of the railroad, as set out in a schedule amounting of direct debt, $122,852.58, and prospective debt for additions $40,000—making $162,852,58. The United States besides, were paid the sum of $288,000—partly in cash, and the remainder in short notes well indorsed. The deeds contain an agreement on the part of the United States to defend this property from the claim of the First National Bank, on account of the overdraft for $72,009.09; and a note that May had given to the Bank in the name of Beauregard, and held as cash by the Bank. These two sums amount to one hundred and twelve thousand, nine dollars and nine cents. The United States also agreed to defend their transferrees from an assignment of Graham's interest, to the Fourth National Bank of the City of New York. (Record, p. 54.)

3. In October, 1867, there was what is called, an act of fusion, settled by Beauregard, Bonneval, Bender, and Hernandez of the one part; and the New Orleans and Carrollton Railroad Company of the other part. (Record, p. 47.)

There was a legislative authority for this fusion, and it was made necessary by the existing conditions. The entire failure of May and Graham, had deprived Beauregard of resources to place

the property in a suitable condition. He was burdened with an onerous debt by the failure and fraud of his associates. The corporation had no security for the fulfilment of the obligations contained in the lease, and for the payment of the stipulated rent. The calculations upon which the partnership had been made in April, 1866, in May, 1867, had been entirely disappointed, and had compelled its dissolution. By the united action of Beauregard the lessee, and of Bonneval, Bender and Hernandez, the transferrees of the rights, interests and estates of the United States, the lease to Beauregard was surrendered and cancelled, and the New Orleans and Carrollton Company restored to the possession and control of all of the property and the franchises it had parted with. The consideration clause is, that the corporation should issue eight thousand shares of stock, four thousand of which should be allotted to these parties, and the corporation agreed to assume and bound itself to pay the debts and liabilities of the New Orleans and Carrollton Railroad Company, and of the four parties Beauregard, Bonneval, Bender and Hernandez on its account.

This fusion was completed the 15th of October, 1867, while the property was held by Bonneval, Bender & Hernandez, under the conveyance Exhibit I, made on behalf of the United States by Bell. The conveyances Exhibits J and K, bear date the 31st of October, 1867. (Record, p. 47.)

The New Orleans and Carrollton Railroad Company have had no other connection with the partnership of Beauregard, Graham & May, than what is contained in the act of fusion. In that act of fusion Beauregard is a party and the lease is cancelled.

IV.

THE CANCELLATION OF THE LEASE AND FUSION.

In the deed of the 16th May, 1867, (Record, p. 26,) May transfers the interest in the railroad lease in the name of Graham, under a power of attorney from him, as well as for himself. He

states the fact that the name of Graham was interposed, and that the entire interest was his own. It appeared afterwards that Graham had made an assignment of this interest to the Fourth National Bank of New York, to secure that bank as a creditor of the First National Bank. The First National Bank commenced a suit to enforce that interest, which reached this Court and was decided and is reported. Bank vs. Carrollton Railroad Co., 11 Wal., 480. Graham was not a party to that suit. He has never contested the transfer to the United States by May, nor asserted any direct claim against the Carrollton Railroad Company, in anyone of these cases. Nor did the First National Bank in this suit, by cross-bill or otherwise, put in issue the validity of its claim.

The power of attorney from Graham to May, dated the 29th of September, 1866, is a confirmation of what May has said on the subject of his connection. (Record, p. 103.) He authorizes May to transact all business and concerns of whatever kind, nature or description soever the same may be, in which he has or may have an interest with any person or persons, partnerships or corporations; and to do and perform all the acts and things which may be necessary, requisite, convenient or useful in the transaction of such business or concern as fully as he could, were he present. Unlimited control over his name was given in all pecuniary or business transactions. He could sell or buy real property, dissolve partnerships and make settlements, compromises and transactions.

The deeds of the 14th and 16th of May, 1867, to the officers of the United States dissolved the partnership. They provided for the liquidation of obligations to the amount of $162,852 of partnership debts.

The result that followed was the cancellation of the lease and the restoration of the New Orleans and Carrollton Railroad Company to possession of the property. The manifold obligations which Beauregard had covenanted to discharge, and which

May and Graham undertook to guarantee, were all released. Graham did not oppose nor protest against the result.

V.

THE CLAIMS IN THE BILL; DEFENCES OF DEFENDANTS; AND DECREE OF CIRCUIT COURT.

1. The charges in the bill of the plaintiff are that the First National Bank being the creditor of this partnership—a commercial partnership—the members of which are bound in *solido*, had a lien or privilege on the effects of the firm, and were entitled to be paid out of those effects to the exclusion of any individual creditor.

2. That the firm of Beauregard, May & Graham was insolvent, and that none of its members was able to pay the debts he owed, and that they were not authorized to dispose of their partnership property for the payment of any individual debt of any of the members of the firm.

3. That the deeds in favor of the United States in May, 1867, and the deeds of the United States to Bonneval, Bender & Hernandez, and of those parties and Beauregard to the New Orleans and Carrollton Railroad Company, are in fraud of the rights of the Bank as a creditor of the partnership, and that the same must be cancelled and the partnership property sold to satisfy the prior and privileged claim of the Bank.

The facts in the cause are not open to much dispute or contradiction. It has been proved that there was a debt due to the Bank for the sum stated and under the circumstances set forth; that the conveyances were made as stated; that May was a debtor of the United States and a creditor of the First National Bank; and that the United States holds his check for the amount of the deposit and the assignment of that deposit was adopted in the Bank.

Bonneval, Bender, Hernandez and the Carrollton Railroad Company have answered, and pleaded the existence of this debt as a bar to any claim upon them under the allegations of the bill. (Record, p. 216, fol. 565.)

The United States became a party to the suit on their own motion, and filed what is termed in the record an interpleader. The position is somewhat anomalous, that of a party coming into a cause and having the privileges of a party, without consenting to submit to the responsibilities of the situation. (Record, p. 108.)

The United States are certainly an appropriate party to the suit, for conveyances made to the agents of the United States for their benefit, and titles made to parties by the United States are impugned as invalid, and the Court is called upon to cancel them as null and void.

The Circuit Court, in June, 1871, dismissed the bill at the cost of the plaintiff. Five years after—less one week—an appeal was taken to this Court by the plaintiff, and the decree of the Circuit Court is called in question.

BRIEF OF ARGUMENT IN SUPPORT OF THE DECREE OF THE CIRCUIT COURT.

I.

Since the decree was rendered in the Circuit Court, this Court has determined that the partnership of Beauregard, May & Graham, was not a commercial partnership, but under the Louisiana Code, an ordinary partnership, and that the partners were not liable in *solido*, but, only for their virile shares respectively.

Beauregard vs. Case, 91 U. S., S. C. R., 134.

It is also stated that the conveyances by May to the Treasury Agent in 1867, was a dissolution of the partnership.

Bank vs. Carrollton Railroad Co., 11 Wall., 480.

The principle that the creditors of a partnership have a privilege or preference, of payment out of the effects of a firm in the course of liquidation, to the exclusion of the creditors of the several members of the firm is acknowledged. There is an article of the Code of Louisiana which declares and ordains such a preference.

C. C., 2823.

But the condition on which this preference can be enforced is that there shall be property owned by the partnership when the claim for the privilege is sought to be enforced. The privilege does not attach to any article of partnership property separately or distinctly. but to the effects of the firm, belonging to the partnership at the time the power to enforce this right arises and is presented to a tribunal competent to enforce it. When the property ceases to belong to the partnership, the privilege is extinguished for the want of a subject.

C. C., 3277.

Skillman vs. Purnell, 3 La. R., 494.

Baca vs. Ramos, 10 La., 418.

Lallande vs. McRae, 16 La. Ann., 193.

40 Dalloz Jurisp., Gen. tit. Societé. No. 632, p. 498.

When the decree of the Circuit Court was made in 1871, the Court did not have under its control, for administration or disposition, the effects of the firm of Beauregard, May & Graham, or any property to which they had any claim. The Court did not have before it the persons composing that partnership; Graham is not a party to this suit. Nor did the Circuit Court at the time the bill was filed or pending the suit have the partners or the partnership effects under administration and control. The partnership was dissolved in the month of May, 1867. With the consent of every member of the firm within the same year, the lease that formed the substratum of the partnership

was surrendered and cancelled and all of the property of the partnership transferred to other parties in legal modes and for adequate considerations. It may be conceded that a conveyance by May, a conveyance by Graham, or a conveyance by Beauregard would not defeat the preference of the creditors of the firm. But it cannot be denied that the conveyance of Beauregard, May & Graham would transfer the property to any *bona fide* purchaser, discharged from any claim of any general creditor of the partnership or the partnership itself.

McNutt vs. Strayham, 39 Penn., 269.
Baer's Succession, 12 La. Ann., 698.
Backus vs. Murphy, 39 Penn., 397.
Skillman vs. Purnell, 3 La., 494.
Ketchum vs. Durkee, 1 Barb. Ch. Rep., 480.
Reese vs. Bradford, 13 Ala. R., 837.
Lallande vs. McRae, 16 Ann., 193.
Parsons on Part., 503.
Sage vs. Challon, 21 Barb.
3 Kent's Comm., side page 65, 12th edition.
Young vs. Painter, 3d Met., 459.
Ely vs. Hair, 16 B. Mon., 237.

II.

A lease in Louisiana does not convey any estate, or right in the property which forms its subject. It is a contract whereby the lessor confers a right to enjoy a portion of his property for a determined price. The nature of the right is ascertained from the contract. In this instance the lease is to Beauregard. He binds himself to pay and obliges himself to the performance of all of the conditions in the lease. There are changes to be made in the property. An important part is to be sold and important additions and ameliorations are to be made. The property must be skilfully managed to be productive, and in the managemen weighty responsibilities must be incurred.

The charter obligations of the corporation must be fulfilled. These Beauregard undertakes to perform and the corporation accepts him as the sole lessee.

He cannot transfer the lease nor make a sub-lease without the the written consent of his landlord. May and Graham understand this, for they take cognizance of it and bind themselves that Beauregard will faithfully comply with all of these conditions. (Record, p. 9.)

The articles between Beauregard, May & Graham were afterwards signed. They state that Beauregard shall obtain a lease in his own name for the joint account. Beauregard shall take *charge* of, *conduct*, *manage*, and *direct* the undertaking according to his best endeavors, ability and skill for the common benefit—selecting his own assistants, with proper salaries.

May and Graham agree to furnish the money necessary to carry out the enterprise not to exceed one hundred and fifty thousand dollars for each; to be reïmbursed with eight per cent. of interest annually, from the net profits, before any dividends should be made. Beauregard was to keep proper books which May and Graham might see and he was to render statements monthly to them. After the capital was refunded to May and Graham the profits were to be equally divided. It is clear from an examination of these articles in connection with the terms of the lease, and the restrictions on its transfer which the corporation imposed that the partnership consisted in the anticipated net proceeds or profits of the management of the railroad after the money paid by May and Graham should be refunded. There was a loan of money to be used in the way of preparation. This loan of money was to be reïmbursed from the net profits—all of which were to be applied to the payment of that debt. Then, the partnership in the tolls and fares of the railroad was to commence.

The partners were not the owners of the lease. This condition was carefully provided for in the lease itself. The articles pro-

vide with care that Beauregard shall manage, control and direct the undertaking. This is what Beauregard had obliged himself to do in the covenants made with the railroad company and the sole charge and management was left to him. The partnership is a particular partnership confined to the precise subject expressed in the articles. This was a division of the profits arising from the management and control of the railroad property in the hands of the lessee. The property itself did not constitute any portion of this capital. Nor was the lease of that property embarked in the undertaking. May and Graham had no authority to interfere with the occupation, use, employment, control of the property. For that, Beauregard was responsible to the New Orleans and Carrollton Railroad Co.

The partnership relation extended to all that concerned the receipt of the tolls, fares and profits of the undertaking, and the appropriation of these according to the articles. The net profits was the fund out of which reïmbursement of the money supplied by May & Graham, and the interest thereon, was to be made. Until this reïmbursement was made, this was in the nature of a loan to Beauregard to be paid out of a specific fund, and not exigible out of any other. After this payment was made, the net profits constituted the fund for distribution. The charge, management, and direction of the railroad were determined by the terms of the lease, and these were confided to Beauregard by the lease, and his obligations in respect to these, arose from its terms and in favor of his landlord. May and Graham subscribed this lease as his sureties, and not as lessees or as owners of the lease. "They took cognisance of the contents of the lease," and bound themselves that Beauregard should perform all he had promised. Similar partnerships have been formed in Louisiana in the management of plantations, steamboats, mills, &c. Such partnerships do not imply any change of title of the property used by the partnership, nor subject it to the partnership liabilities. It is the *use* of the thing which is granted to the partner-

ship, and the profits for that use which constitute the subject about which it is concerned.

Owen vs. Davis, 15 Ann., 22.
Mousseir vs. Zuntz, 14 Ann., 15.
Weld vs. Peters, 1 Ann., 432.
Theriat vs. Michel, 28 Ann., 107.

The extinction of the lease necessarily terminated the partnership.

Bè-darride de Societé, Secs. 51, 52, 53.

In Louisiana, a commercial partnership is limited to personal property, and land is not a partnership asset. The partners hold it by distinct and separate titles.

Skillman vs. Powell, 3 La., 497.
Poydras vs. Laurens, 6 Ann., 771.
Thomas vs. Scott, 3 Rob., 256.
Willey vs. Carter, 4 Ann., 56.
Lee vs. Ferguson, 5 Ann., 532.

The result shows that the allegations of the bill in respect to the existance of any lien or privilege on the property described in the conveyances, assailed by the plaintiff, have no groundwork. That the partnership could not have any property as such, until there were profits from the undertaking, and that May & Graham by their insolvency, their inability to bear the charges to put the property in order and their abandonment of the undertaking without consultation with Beauregard in May, 1867, terminated their relations. Beauregard could not but surrender the lease. He was in arrears for rent, and on his payrolls in July, 1867, and reduced to insolvency by the overdrafts that May had stimulated. The agents of the United States, so far from doing wrong to the creditors of this short-lived firm, provided for the payment of all of its recognized debts—amount-

ing to one hundred and sixty-two thousand, eight hundred and fifty-two dollars and fifty-eight cents, ($162,852.58.) The United States had a check on that bank for more than the overdraft of May—and owned beside one-fourth and more of its stock, in all probability paid for with their own money by their Treasurer May.

The argument of the bill is that the money obtained from the First National Bank upon the checks of the lessee, from September, 1866, till May, 1867, may be searched for through all the ramifications of the business, and wherever there is any probability that any part of it came to any person, that person is a debtor of the Receiver. It is not to be denied that the negligence and want of fidelity of the various officers of this Bank are conspicuous upon this record. It is agreed that May was the author of the overdrafts and that the first of them occurred 6th of September, 1866, during the Presidency of Graham, and while Beauregard was absent in Europe, (Record, p. 145, fol. 386;) and while May was Assistant Treasurer of the United States. Graham resigned the latter part of that month, and was complimented for the faithful and efficient way he had performed his duty. (Record, p. 191, 192.) May was then chosen to be President. His successor as Assistant Treasurer (Wm. R. Whittaker) took office the 18th of September, 1866.

The demand note made by May in the name of Beauregard for $40,000, which was counted as cash by the Teller thenceforth, and which May says, is his individual debt, was made the 14th of September, 1866, to cover overdrafts existing previously. The paid up capital of this Bank we learn, at the office of the Comptroller of the Currency, to have been one hundred and fifty thousand dollars.

From the 6th of September to the 14th of September, 1866, May deposited in this National Bank, to his own credit, nine hundred and eighty-eight thousand six hundred and forty-three dollars. His balance was not reduced below seventy-four thou-

sand dollars until late in October, 1866; Beauregard's note was held as cash by the Teller during all this time. (Record, p. 129.)

In March, 1867, the deposit account of Beauregard lessee, made a ghastly exhibition of continually growing overdrafts. (Record, p. 33.) A bill was then drawn by May upon Graham for one hundred and twenty-five thousand dollars, and credited as cash in the account. (Record, p. 33.) May's account in the course of two months from its date, shows deposits in sums of $100,000, $500,000, $200,000, $135,000, $125,000, to the amount of near $1,200,000. (Record, p. 130.) The balance to his credit the last of April, 1867, was above $342,000. On the 14th of May, a fortnight later, $315,779. It would have been competent to the Bank to have charged the overdrafts to May. There were none of them that he had not permitted, and none that he did not agree during the time to make all right. The Receiver was appointed the 20th of May, 1867. The defalcation of May as assistant Treasurer and the ruin of this National Bank were made known at the same date. The circumstances attending both were notorious. But we find no effort on the part of the Bank, its stockholders, or receiver to arrest the appropriation of the money held by the Bank on deposit for May to the payment of the debt due to the United States.

Bell, the agent of the Treasury, did not sell the interest conveyed by May in the Carrollton Railroad property until the 21st of August, 1867. The conveyance of Bell was not ratified at the Treasury of the United States with modifications until October, 1867. While the United States had possession of those contracts and before other parties were involved, the Receiver might have brought forward the equitable or legal claims of the Bank.

But this was never done. In October, 1867, the fusion, as it is called, of the claims of the lessees with those of the New Orleans and Carrollton Railroad Company, took place. There had been large expenditures by the lessee upon the property; there

were large expenditures to be made, to render what had been done productive. The lessee, independently of the overdraft, had become indebted for property and labor one hundred and twenty-two thousand, eight hundred and fifty-two dollars and fifty-eight cents. (Rec. pp. 38, 39-107.) The Carrollton Railroad Company had no security of any value that any stipulation of the lease would be performed.

The corporation purchased the lease from the lessee and paid the stipulated price. The lease was surrendered and cancelled in October, 1867. The shares of stock issued to make the payment have been sold in the market and passed from the lessees. The Railroad Company has assumed to pay the debts enumerated in the schedules we have cited and to complete the repairs, and to complete the purchases of the property. More than two years elapsed before the Receiver instituted this suit to set aside the contracts of the 14th and 16th of May, 1867, and those that followed upon the contracts. The bill charges that the money used by Beauregard was the money of the Bank, and that it can be followed through all those mutations of the titles to the property after the dispersion of the partners. The same argument might be more plausibly employed by the United States against this National Bank itself, and against the Receiver of that Bank, upon a motion to sequestrate all of the effects of that institution for the reimbursement of the United States of the one million and seventy-six thousand dollars which May had embezzled.

May and Graham, at the failure of the Bank, had 2,410 of the shares of the Bank, probably a large majority of the whole. It is not an uncharitable conclusion to believe that these were paid for with the money of the United States. When we examine this assignment to the United States we find a transfer of stock in the First National Bank; deposits in the First National Bank; Carrollton Railroad lease paid for with overdrafts on the First National Bank, estimated as worth together $936,000. His

town house, plantation, commission business and steamboat make up the remainder of the property which May turns over as worth $1,196,779. The United States have collected from the Carrollton Railroad property, ... $288,000

From the National Bank on the check by a sort of seizure, on the 14th of May, as described in the Record, (Knox's dep., Rec. pp. 120-121;) . . . 80,000

$368,000

The amount of collections from May, as reported by the Treasurer of the United States, is $395,805.76, leaving a debt due to the United States of $680,891.53 as resulting from the operations of May and Graham in the National Bank. It is not surprising that the agent of the United States should have concluded that all he found in the First National Bank of New Orleans was the immediate product of the money withdrawn from the Treasury by the Assistant Treasurer.

There is no evidence to show that the money used for the purchase of any property conveyed to the Carrollton Bank was money drawn irregularly from the Bank. Nearly all of those payments were made prior to the first overdraft in September, 1866.

During the whole period the earnings of the railroad were deposited day by day with the Bank. During the whole period May had a deposit account, from which payment might have been obtained. The sums withdrawn from the Bank by that mode were loans to the lessee and the firm, and were used in the current concerns of the business. The Bank acquired no lien upon the property or the business of the lessee. Those who had charge of the Bank were satisfied with the promises of the officers, and the Receiver of the Bank did not make complaint of the transaction until the property in the lease had passed into other hands.

There is no foundation for this claim.

Stroud vs. Gwyer, 28 Beav., 130.

Willet vs. Blandford, 1 Hare, 253.

Simpson vs. Chapman, 4 De G., M. & G., 154.

It is a question among the French jurists whether one partner in an ordinary partnership can use a credit belonging to another in compensation of a debt claimed against the partnership. The decisions in Louisiana are that he may employ it for the purpose.

Dick vs. Byrne, 7 Rob., 465.

Bliss vs. Patrick, 6 Ann., 479.

The consent of the bank to the transfer of May's deposit to the United States, deprived May as well as the others of this advantage. (C. C., 2208, 2211.)

But the bank in consenting to this transfer and putting away its means of payment, cannot, after a long lapse of time, insist that the overdrafts that had been authorized on the promise of May, to make good or to set right can be impeached as fraudulent, to the wrong of third persons. We concede, without the consent of the United States, that compensation is not a good plea in this cause. But the United States have interpleaded in this suit, and have undertaken to defend the titles to the interests and estates conveyed by their officers to Bonneval, Bender and Hernandez. The supplemental answer of these defendants allege that May caused these overdrafts to be made, that he promised all parties to set the matter right by payment. He informed the United States that these debts were his own personal debts, and that the partnership was secondarily liable, if liable at all. If it becomes necessary to defeat this claim, we insist that the amount held by the bank as a deposit of May, may be employed to extinguish the debt of Beauregard, May & Graham for the overdraft.

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III.

On behalf of the New Orleans and Carrollton Railroad Company, we insist that having prohibited their lessee from making any transfer of the lease, or from making any underlease, and that May and Graham having had full notice of this condition, it was not competent to Beauregard to make any title to the lease, or interest in the leasehold property, the subject, or the condition of a partnership. That the said corporation had full power to accept the surrender of the lease without reference to the co-partnership or the claims of its creditors. That it was not competent to Beauregard to preclude himself from making a transfer to the corporation, nor could he encumber it to other parties. The corporation, in the exercise of a legal right, had interdicted the transferance of the lease, or the introduction of another tenant to possession of the property.

In October, 1867, when Beauregard made his surrender of the lease to the New Orleans and Carrollton Railroad Company, May and Graham had renounced their connection with him and were both insolvent and in discredit. There was, besides, the claims of the First National Bank through the agency of May, a debt of one hundred and twenty-two thousand dollars for labor and property. There were daily demands for expenses of the undertaking, and monthly demands for the stipulated rent. Improvements, which had been projected to make the property profitable, were incomplete. The New Orleans and Carrollton Railroad Company, under the terms of the lease, might cancel it for default on the part of the lessee. (C. C., 2711, 2712, 2729.) The lessee was without capital and without credit to carry on the undertaking. The consent of Beauregard to the cancellation of the lease was made necessary by the contingencies that had occurred. The joinder by him in the act which contains the surrender was made for a full and adequate consideration, and is a full and formal conveyance to the New Orleans and

Pierce v. Dufourcq 8 La. Ann. 399
Condescendo v. Redon 4 La. 40
Trophone de Louage — No's 132 to 138
1 Hunter Louisiana Tenant 226

Carrollton Railroad Company of the title to the use and enjoyment he had acquired. Bonneval, Bender and Hernandez were empowered to represent the claims of May and Graham. The cession was in October, 1867. This suit was commenced in July, 1869. At this latter date Beauregard, Bonneval, Bender and Hernandez had no interest in the property, and had expended the shares of stock issued to them.

There was no property on which the partnership of Beauregard, May & Graham had any interest whatever. The Receiver of the First National Bank has nothing to which his preference could attach at the time he filed his bill.

IV.

A Court of Chancery has a jurisdiction to enforce a lien or privilege upon property specifically subject to the payment of an ascertained debt. But the preference a creditor of a partnership has to payment of his debt from the partnership property, over a creditor of one of the members of the firm, is not of this character. A partnership is regarded as a juridical person, capable of holding property and contracting obligations, and is subject to legal pursuit. The property of the partnership is the common pledge of its creditors in the same sense that the property of an individual debtor is a pledge to his creditors that his engagements will be fulfilled from it.

In neither case is there a mortgage, or a lien, or any other than the ordinary legal remedies for the collection of the debt. A Court of Chancery is not the appropriate tribunal for the commencement of a suit to collect a partnership debt, or to subject property once belonging to a partnership, in the hands of third persons, even though the conveyance may have been to delay, hinder or defraud creditors.

In this case neither the United States, nor those claiming under the United States, can be accused of any fraudulent inten-

tion or purpose, nor can Beauregard or the New Orleans and Carrollton Railroad Company. Among all of these parties nothing can be discerned but a desire to extricate themselves from the condition of embarrassment and to avoid the loss resulting from the failure or fraud of May.

The New Orleans and Carrollton Railroad Company acted within the precise limits of right, and has done nothing to the prejudice of the First National Bank. The corporation has paid the full value of everything which was conveyed by the parties to the fusion. The Receiver witnessed the consummation of all these contracts without making opposition or asserting any adverse claim. There is no case made which will justify the interposition of a Court of Chancery, nor which that Court is competent to entertain cognisance of.

JOHN A. CAMPBELL,
Sol. for Appellees.

APPENDIX.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
Washington, October 14th, 1878.

Sir:—I have received your letter of the 11th inst., and in reply to your inquiries you are informed:

1. That Thomas P. May was appointed Assistant Treasurer, U. S. at New Orleans, November 4, 1863, and his successor, Wm. R. Whittaker, was appointed September 18, 1866.

2. The First National Bank of New Orleans was organized December 18, 1863. The paid in capital was $150,000, of which Thomas P. May held 400 shares, and A. C. Graham, 650 shares.

3. According to the account of the Treasurer U. S., the government has collected $395,805.76 on the original deficit, which was $1,076,797.29, leaving the amount due on April 30, 1878, $680,891.53.

4. The bank has paid three dividends. One of 15 per cent., May 27, 1871; one of 20 per cent., December 22, 1871, and one of 30 per cent., April 23, 1874, making in all 65 per cent.

Very respectfully,

JNO. JAY KNOX,
Comptroller.

JOHN A. CAMPBELL, Esq.,
169 St. Paul Street,
Baltimore, Md.

[COPY.]

No. 59.] AN ACT

FOR THE RELIEF OF CARROLLTON RAILROAD COMPANY.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened*, That the President and Directors of the New Orleans and Carrollton Railroad Company are hereby authorized and empowered, a majority of the stockholders in number of shares held concurring thereto, to consolidate the interest of the stockholders with those of certain parties, lessees of said railroad, and for that purpose to pass and sign, through their President, such notarial acts as may be requisite, issue such additional stock as may represent the value of the improvements placed on said railroad by said lessees, and scale the stock of the present stockholders in accordance with its real value, reissuing certificates for the same at the rate of one hundred dollars per share; *provided*, the total amount of stock shall not exceed at any time one million of dollars; *and provided further*, that in all elections of Directors, and other meetings of the stockholders, no one stockholder shall vote in his own name more than five hundred shares, but, up to that number, each shall be entitled to one vote.

SEC. 2. *Be it further enacted, etc.*, That this act shall take effect from and after its passage.

(Signed,) DUNCAN S. CAGE,
Speaker of House of Representatives.

(Signed,) ALBERT VOORHIES,
Lieut. Governor and Presid't of Senate.

Approved March 9th, 1867.

(Signed,) J. MADISON WELLS,
Governor of the State of La.

A true copy.

(Signed,) J. H. HARDY,
Secretary of State.

Acts of 1867, p. 123.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

FRANK F. CASE, RECEIVER, ETC.,
v.
G. T. BEAUREGARD ET ALS. } No. 167.

APPEAL FROM UNITED STATES CIRCUIT COURT FOR LOUISIANA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1878.

FRANK F. CASE, RECEIVER, ETC., *v.* G. T. BEAUREGARD ET ALS. } No. 167.

APPEAL FROM UNITED STATES CIRCUIT COURT FOR LOUISIANA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The interest of the United States in this litigation arises thus:

Thos. P. May, of New Orleans, while United States assistant treasurer in that city, and subsequently, through the collusion of his successor in office, used the public funds for private purposes, and thereby became indebted to the government in the sum of $1,076,792.29. (Record, 230.)

Among the enterprises in which Mr. May was engaged was a lease to G. T. Beauregard by the New Orleans and Carrollton Railroad of its road, in which A. C. Graham was also an associate, actually or nominally.

In equipping and managing this road heavy disbursements were necessary, and the financial transactions connected therewith were carried on through the First National Bank of New Orleans, of which the complain. ant is receiver.

That institution closed its doors April 25, 1867. In the following month the Comptroller of the Currency was in New Orleans, and, toward the liquidation of Mr. May's indebtedness to the government, took a conveyance of all his and Graham's interest in the lease of said railroad, and in all the real and personal estate purchased and used in improving and carrying it on. Subsequently the United States sold the interest and property thus acquired to Messrs. Bonneval, Hernandez, and Binder, by an instrument in which it was "understood, covenanted, and agreed that all the liabilities due and owing by said May and Graham, as lessees and copartners aforesaid, for account of the aforesaid road, as per the annexed schedule will appear, shall and will be, and the same are hereby, assumed by the *purchasers*. It is further understood, covenanted, and agreed that *the United States shall and will at all times protect the purchasers against and save them harmless from any claim which may at any time be set up against them personally, or against the said copartnership, or the property, rights, and effects thereof, by or in the name and for the use of the First National Bank of New Orleans, or its assigns, for the recovery of or in reference to an overdraft of* $72,009.09, *and a promissory note for* $40,000, in all $112,009.09, *which apparently stand to the debit of G. T. Beauregard*, as lessee of the New Orleans and Carrollton Railroad, *but which in truth and reality are exclusively due and owing to the said bank by the said Thomas P. May.*" (Record, 41, fol. 104.)

This is an attempt to collect these and other moneys, amounting to $237,008.89 (Record, 80, fol. 207), out of this property, and the United State is made party by reason of the foregoing warranty, and of its dealing with the property.

BRIEF.

I.

There never was any liability on the part of anybody but Thos. P. May to the bank on account of the transactions recited. Graham's interest was but nominal, and Beauregard was to furnish none of the money needed.

"The said Thos. P. May and Aug. C. Graham shall furnish the money necessary to carry out the enterprise," &c. (Record, 13, bottom.)

The bank, of which Graham and May were successively president, and with which they were connected at its organization, as the bill charges (Record, 75, 76), had the same notice of the terms of the partnership which was had of its existence. (Record, 84, especially folio 218.)

The real transaction was that May and Graham raised at and through this bank the funds which they, individually, agreed to furnish to pay for the interest given them in this enterprise. It was not a debt of the partnership, but a loan to these two gentlemen to enable them to go into it. The account was kept in the name of Beauregard, lessee, because, under the arrangement, he was the only person entitled to draw against it.

II.

At all events, the question of the liability of this partnership, its estate, and effects, to the bank was one to be settled at law before any resort could be had to a court of equity. As the bill now stands, it is merely an attempt to use chancery proceedings for the collection of a debt, the very existence of which is disputed (Pub-

lic Works *v.* Columbia College, 17 Wall., 527), and has not been ascertained by a judgment. See the narrative of the bill (Record, p. 78, folios 200 and 201), and the prayer for relief. (Record, 80, folios 206 and 207.)

Instead of first exhausting the legal remedy, the complainant has not thought it worth while to resort to them. (Story, Eq. Pl., 257, a; Jones *v.* Green, 1 Wall., 330; Brown *v.* Bass, 4 Wall., 262 and 265, top; U. S. *v.* Un. Pac. R. R. Co., No. 3 of current term; Crippen *v.* Hudson, 13 Kernan, 161; Griffin *v.* Nitcher, 57 Maine, 270; Howe *v.* Whitney, 66 *Ib.*, 17.)

EDWIN B. SMITH,
Assistant Attorney-General.

April 17. 79 Arg'd W. T. Swayne
9 Otto p. 119
Oct. 7. 1878

Supreme Court of the United States

OCTOBER TERM, 1878.

No. 167.

FRANK F. CASE, Receiver of the First National Bank, New Orleans, Appellant,

vs.

G. T. BEAUREGARD AND OTHERS, Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

PETITION AND ARGUMENT FOR A REHEARING.

CHARLES CASE and
J. D ROUSE,
Solicitors and Counsel for Appellant.

Thomas McGill & Co., Law Printers, Washington, D. C.

II. Whether complainant was not entitled to relief by virtue of those clauses of Exhibit L, (Record, pp. 48, 49, and 50,) known as the "Act of Fusion," which stipulated that said New Orleans and Carrollton Railroad Company assumed, and bound itself to pay, the debts of said Carrollton Railroad, said lessee, (Beauregard,) and "said parties of the second part," as in said Exhibit L set forth; and whether said decision should not have so declared and decreed?

III. Whether there may not have been error in the determination and decision that the facts of said cause established no case of *trust* of which a court of equity could take jurisdiction to grant the relief, or proper relief, as prayed by said complainant's bill?

IV. Whether article 2823 of the Civil Code of the State of Louisiana (with other provisions of said code) does not confer upon a partnership creditor a specific preference and privilege, or lien, against and upon the property and assets of such partnership, which preference and privilege, or lien, may be enforced by such creditor against such property or assets, although not insisted upon by any partner, and although such property and assets may have been transferred to third persons with notice of the character of such property and assets and such indebtedness; and whether, because of said article 2823 and other provisions of said code, said decision and decree should not have been in favor of complainant?

V. Whether it was not error to hold that there had been any such valid transfer of said partnership property and assets as extinguished the right of complainant to assert and enforce the preference and privilege given by said article 2823, either by virtue of article 3244 of said code, or otherwise?

VI. Whether there may not have been error in recognizing as legal and valid the said alleged transfer by said May to the United States of the interest of the said Graham in said copartnership and its effects, as is in substance done by said decision and decree?

VII. Whether there was not error in holding that when complainant's bill was filed all the partnership *effects* had been transferred to others for valuable consideration, and that such assumed transfers were not fraudulent in law or fact, as against partnership creditors, as is in substance held and decided by said decision and decree?

VIII. Whether there may not have been error in holding that complainant was not entitled to relief because he was only a simple contract creditor, as was substantially held by said decision and decree?

IX. Whether, in the strongest aspect of the cause against complainant, the decree of said Circuit Court dismissing his said bill should not have been "*without prejudice*," and whether this court should not so have held and decided? And

X. Whether it was not error to affirm the said decree of said Circuit Court?

Preliminary Suggestions.

In presuming to ask of this honorable court a reconsideration of its solemn, unanimous judgment, counsel feel only too keenly the magnitude of the task assumed. Perhaps they could not be more sensitively alive to the weighty odds against them, to the disheartening verity that the end sought is of all others a most forlorn hope. Remembering how business yet pending taxes the resources and

presses upon the time of each member of the court, they know full well that it is pleading for a great boon to beseech only the brief hour or two necessary to a re-examination of points which have already been, with usual circumspection, considered. At the outset it would seem to be but the last paroxysm of desperation.

Nor is it anything but embarrassing to be compelled, in appearance at least, to assume an attitude of conflict with the judgment of a tribunal which, from the beginning of and throughout a long professional life, (even while yet inexperienced and unknown in its forum,) has ever been regarded as a judicial body second to none known to the civilized world. And the hearty confession, that personal acquaintance has but added, if that could be, profounder respect for its dignity, a more unwavering faith in the purity and wisdom of its general judgments, and that this respect and faith extend not alone to the court as a body, but to each and every member thereof, is but confessing facts that render present duty the more onerous — the most so of all past professional experience. Yet it is historically true, that the most eminent jurists of this and other lands have sometimes mistaken or overlooked a vital point; and we present this petition because a careful and thorough review of the law and facts leads us to the unwavering conviction that there has been such mistake or oversight in the opinion and judgment sought to be reviewed, and in the hope that we may be able to make it as palpable to the court as it is to our own minds.

Most earnestly do we implore a patient hearing, not only because of the sum at stake, (now amounting to over one-third of a million dollars,) but because both justice and equity unite in asseverating that we should have a remedy somewhere and somehow; that it will be but a deep reproach upon the law if it is found there is no redress for us; and because if we cannot have it against the persons and property sought to be charged, then are we literally

"without hope," and "of all men most miserable." The debt sued for is an honest debt. It largely made the value of the property we seek to charge, and the interests of the bank creditors have lost no merit because they have been so long-suffering and patient. To show what they have patiently waited for, let the leading facts be recalled, that the parties who have successively purchased or held the property, from the United States to the present holders (defendants) inclusive, have taken with abundant knowledge that the money which complainant's claim represents went into that property and helped to swell its value.* In other words, the present holders (defendants) know full well that they are enjoying without recompense (but striving to evade it) the money of the bank creditors, whose agent the receiver is; (11 Wall., p. 199;) and if these creditors have been thus patient, it was, perhaps, because they have looked with justifiable confidence for final redress here, and because elsewhere they were helpless and hopeless.

We shall not here and now controvert the general doctrine of equity as to the preference given the partnership creditors, dependent for its frail support upon the will and acts of the partners alone, and to be worked out, if at all, through them. It may be that it is only too vividly and

* Although relief was not specifically asked upon the theory that the property sought to be charged was bought, improved, or constructed with the money of the bank, yet, on a critical comparison of the bank account with many of the large items of the account of receipts and expenditures of the partnership, as set forth in the Record, pp. 104 to 107, (as, for example, sums paid for horses, mules, harness, cars, painting, building materials, etc., amounting to hundreds of thousands of dollars,) and considering with these the bank checks and bills payable put in evidence (Record, p. 183, and following); remembering, too, that the money for these heavy payments could have come from no other source, there is left no room for a shadow of doubt that every dollar of the $237,000 claimed was used to buy or improve the partnership property; save, perhaps, an inconsiderable amount appropriated to current expenses.

truthfully enunciated in the opinion of Mr. Justice Strong. But, with the profoundest respect, in the light of the facts of this case, we ask, does it not disclose a humiliating impotency of the law to help in a contingency when, if ever, it should be strong to save? Was not the learned justice almost ironically truthful in saying "it is sometimes *loosely*" (alas! how loosely) "denominated a lien"?

Before coming to the argument proper, we hope to be pardoned one or two other explanatory statements. It was suggested, both in the brief and oral argument of counsel for respondents, that the receiver might have satisfied the claim here in controversy by "compensating" (offsetting) it against the $315,000 and over, balance to May's credit as depositor in the bank, which balance he assumed to transfer to the United States, as per Exhibit "N," (Record, p. 24,) also giving to the United States his check therefor.

In reply to this, it must be borne in mind, that before the receiver took possession or had any control of the bank, the agent of the government had drawn over $97,000 cash on this balance, (see deposition of Hon. John Jay Knox, Record, pp. 120, 121,) thus leaving only some $218,000 of it unsettled. Further, when the bank failed May owed to it other debts, as follows: His acceptance of bill drawn by Graham, $100,000; also the note of M. T. Steel for $50,000, the note of D. B. Forbes for $20,000, the note of E. A. Deslonde for $5,000, the note of one Veazie for $4,000 — all indorsed by said May, (see testimony of Louis Meig, Record, pp. 152-154,) and aggregating $179,000. May was also a shareholder, and as such liable in the sum of $140,000; (Record, p. 24;) and the whole case shows, what the receiver learned from the beginning, that creditors could not be paid without enforcing the individual liability of shareholders. It is true, that when the bank failed the bill drawn by Graham and the above specified notes were not quite due, (lacking only a few days,) but May was insolv-

ent; and such being his condition, the law of Lousiana gave to the receiver a remedy to compensate them against any sum claimed as due to May (the $315,000, for example,) by making the proper discount for the time they had to run. It is also true, that May attempted to transfer his stock to the United States, (Record, p. 24,) but that was after the bank suspended, and we shall be only too happy to be informed that such transfer made the government liable as shareholder. Now, as the receiver had, as he supposed, *no other remedy* as to the above liabilities of May, save to compensate them against said deposit balance, and as he had, as he then believed, a remedy for this partnership debt, either against the United States or other transferees, or against the partnership assets, it was clearly his duty to take the course he did, and thus secure, if possible, all the debts due from May to the bank.

Again, it was said that Graham was a mere nominal party in the partnership—to use the words of Judge Campbell, "a mere figurehead of May," he adding "that the power of attorney to May from Graham was evidently drawn in accordance with this theory," &c. We deny this statement *in toto*. The power of attorney has not one feature different from those so often executed by absentees to parties made agents in New Orleans. It was necessary, because Graham was sent to New York, and there remained in charge of the bank agency. The statement that he had only a nominal interest in the partnership, is sustained by the testimony of May alone, *the one of all whose assertions should have least weight*, while it is most unequivocally contradicted by the testimony of Louis Meig, (Record, pp. 197, 198,) D. B. Forbes, (Record, pp. 207, 208,) Phillip Helm, (Record, pp. 209, 210,) A. C. Graham, (Record, pp. 227–229,) and the bank account with Graham. (Record, pp. 187–191.)

We cannot go into details of this evidence, but we assert unhesitatingly that it shows that Graham was not "the

figurehead," but the unfortunate *victim* of May, as was the bank, unless here it can have some redress.

Once more, and partly in personal vindication: Equity favors the vigilant; and more than once, by brief and orally, did counsel intimate a lack of vigilance on the part of the receiver. We cannot go into particulars, but pray the court to remember that no one could in any brief period have learned the condition of this bank and its affairs; that before the receiver could have done so, all New Orleans courts must have closed for the season. Moreover, the first pretended sale by the agent of the United States bound the government absolutely to pay this debt, so far as its amount was then actually ascertained. Could not the receiver repose in the promise of his government? And will this court, in the absence of any proof to that effect, presume that the receiver had any knowledge of the repudiation of this promise, when it was done, within any early period thereafter? We cannot properly state his absence during all that autumn, but we may ask the court to take notice of the historical fact, that "the pestilence that walketh in darkness and the destruction that wasteth at noonday" swept the city during all that time, and it will not be presumed that any man remained who could leave.

We have only to add to these prefatorial remarks, that upon many of the points or queries propounded we shall not now dwell at any considerable length. As to some, our desire being not so much to press them now, as to save them, if that may be, for future elaboration, possibly, in another proceeding in regard to this same subject-matter, which cannot be reached this term. Indeed, for the present we shall chiefly discuss the second and fourth (II and IV) of our questions as assigned, confidently believing that upon these two we have a standing that cannot be shaken by reason or authority.

Thus we come to the main

ARGUMENT.

I. Taking up the points made in their order, we have first to notice the suggestion that the alleged sales by the government to respondents Binder, Boneval, and Hernandez were invalid, &c. It will be briefly disposed of.

It is explicitly charged in the bill, (Record, p. 79, folio 203,) that said Bell and said Solicitor Jordan, in assuming to make said sales and transfers, not only acted without authority, but in entire disregard of the terms and formalities prescribed by statute, and essential to the passing of any title. This charge is undoubtedly based upon section 3749, p. 774, Revised Statutes of the United States, which authorizes the Solicitor, with the approval of the Secretary of the Treasury, to sell and convey property acquired by the United States as this had been; but it only empowers him thus to sell *at public sale*, and after three (3) months advertisement of the time and place of such sale in some newspaper published in the vicinity. We are not aware of any other statute, then in force, authorizing a sale of government property by said Solicitor of the Treasury; certainly no such power inheres by virtue of his office, and being thus conferred by this statute, its terms and limitations must be complied with. There is no pretense that in this instance there was any advertisement, or any other than a private sale. If there had been due notice given, followed by a public offering, the receiver might have been on hand to do what was best for the interest of the bank creditors. Besides, it is only by a recital in the act of sale itself we are told that said Solicitor acted with the approval of the Secretary. If this defect could be remedied, it has not been.

II. We have much confidence in the second position. It was only argued orally, and not presented in our brief,

because that was prepared in extreme haste by Mr. Ronse in New Orleans, where he could not have access to a leading decision which he desired first to consult. It is charged in the bill, (Record, p. 79, folio 204,) that by the act of fusion (Exhibit "L") said railroad company assumed the debt now in controversy, and agreed to pay it. While Beauregard, in his answer, does not admit this charge, he is very careful not to deny it. The other defendants do deny (Record, p. 100, folio 269) that such was the meaning and intent of said act of fusion; say that they intended no benefit to the bank in that regard; in short, that the purpose was to settle the loss upon the bank, in which purpose they have thus far been successful.

We shall not waste many words upon the construction of said act. The first provision (Record, p. 48, folio 123) may be in one sense equivocal, perhaps because of the superfluous use of the word *company* after the word *railroad*. But when it is noticed that certain debts are excepted from the assumption, while this is not, that the phrase is, "whether due by or claimed from said lessee," and that this account was in express words against said Beauregard *as lessee* on the books of the bank, and so charged by his consent, there would seem to be little room for doubt as to its legal effect. If there is doubt, let it be construed to favor justice and right. The later reference in the act (Record, p. 50, last part of folio 128) is less equivocal. Let it be borne in mind that this debt was all charged to Beauregard on the books of the bank; that this was done by his consent (if not by his direction, as to which we are not positive); that he was also "of the parties of the second part" to said act, and the language in this instance is, "said New Orleans and Carrollton Railroad Company becomes and is liable for all the debts of said company *and of said parties of the second part*, except," &c. Considering that by this act Beauregard turned over, so far as he could, all the property bought or improved, with the

money covered by this debt, and it must be held that he intended by the above-quoted stipulation to include said debt, or that his purpose was to defraud the bank of its honest dues. In fact, Beauregard and all the other parties to said act of fusion at that time well knew that not one dollar of the indebtedness to the bank could be collected from May and Graham, or either of them. If they intended and agreed by the aforesaid stipulations to provide for the payment of said debt, then they acted, as they aver they did, in good faith; otherwise, they combined to perpetrate, and did perpetrate, a fraud.

We come now to consider the legal question involved, and will first cite article 35 of the Code of Practice of Louisiana, which is as follows:

"An equitable action is that which does not immediately arise from a contract, but from equity *in favor of a third person not a party to it, and for whose benefit certain stipulations have been made*. Thus, if one stipulated in a contract entered into with another person, and as an express condition of that contract, that this person should pay a certain sum on his account, or give a certain thing to a third person not a party to the act, *that third person has an equitable action* against the one who has contracted the obligation to enforce the execution of the stipulation."

Without citing the numerous decisions of the Louisiana courts as to this article, we content ourselves with saying, that if we are right in our construction of the act of fusion, (and if we are wrong, then were the parties to it guilty of a fraud which should render them equally chargeable,) it alone entitles complainant to the relief prayed. But we need not rest solely upon this article. A similar doctrine has been declared to be the rule in equity by one of the ablest jurists of the present age. We refer to the case of *Olson et al.* v. *Morrison*, 29 Mich., 395, which was cited in the oral argument.

That case was a bill in chancery, by Olson and the creditors of *Olson & Jones*, to compel defendant to pay said creditors the amount of their debts, and to have the same declared to be an equitable lien upon certain property bought by defendant of Olson, and which formerly belonged to the firm of Olson & Jones, and to enjoin defendant from conveying or incumbering the property. The bill was founded upon a contract between defendant Morrison, of Chicago, and Olson, of Muskegan, Michigan, by which Morrison agreed to pay Olson "one thousand dollars in hand, one thousand dollars in ninety days, *and to assume and pay all the debts of Olson & Jones*, in consideration that Olson should convey to Morrison by warranty deed the undivided half of Olson & Jones' mill property in Laketon, Michigan, and execute a bill of sale of all the personal property heretofore held and owned by Olson & Jones, and used in and about said mill and mill business." The court below decreed in favor of complainants, and the case was taken to the Supreme Court, where *Cooley, J.*, delivered the opinion, as follows:

"The creditors of Olson & Jones were entitled to a common relief under the contract between Olson and Morrison, and might very properly unite in a suit to obtain it. Olson was also a proper complainant, (it is not said he was a *necessary* party,) because interested in the payment of the debts, and also because a party to the contract. Jones *might* have been made a party, but there is no sufficient reason requiring it. It was not necessary for the creditors to obtain judgments before filing the bill. Morrison had purchased a property which belonged to the partnership, and *which constituted a fund for the satisfaction of their demands*, and having agreed, in writing, to assume and pay these as a part of the price, he had thereby recognized their equitable lien, and there is no more reason for requiring the several creditors to put their demands in judgment at law than there would be in the ordinary case of settlement in equity of partnership affairs.

"Nor should the creditors be required first to exhaust

their remedy against Olson & Jones before proceeding against Morrison. The latter, by assuming the debts, has taken the place of the parties primarily responsible, and is precluded from insisting that parties whom he has undertaken to relieve shall be pursued.

"The creditors might have sued Olson & Jones, but were at liberty to do what they have done. So, Olson had a remedy at law against Morrison on the contract, but the equitable remedy was so much more complete, embracing as it did what might otherwise have been numerous suits, with a possible necessity of final resort to equity, that the right to elect is unquestionable. Decree affirmed with costs."

Why may not complainant invoke the relief prayed, upon the doctrine of this adjudication alone? True, he cannot urge the avoidance of "numerous suits" as one reason for primary resort to a court of equity; for he is the only creditor of the partnership "left out in the cold," to use an unpolished but expressive saying, deliberately left unprovided for, while all others are paid or secured; but he can urge the well-nigh certain necessity of a final resort to that jurisdiction.

III. In regard to the third proposition, we have to suggest, that when the partnership was dissolved by the assignment made by Graham on the 8th day of May, 1867, all the partners were *insolvent*. What the effect of that assignment was, as to transferring any effects of the partnership, or as to the power of May to deal with the interests or rights of Graham, will be subsequently considered. We now cite, and seek to apply, two decisions, viz.:

Re Cook, 3 Biss., 122.

Smith v. *McMicken*, 3 La. Ann., 319.

The case in 3d Bissel was cited at the hearing, but will bear repeating. It was as follows:

Cook and Gleason were *insolvent* partners. Cook assigned his interest in the copartnership assets to Gleason,

and the latter agreed to pay all the firm liabilities. Subsequently, both were forced into bankruptcy. Clara M. Davis was a judgment creditor of Cook, and filed a petition asking payment of her judgment from the assets of Cook's estate, the same having been firm assets. The judge says (p. 127): "When partners are, as in this case, *insolvent*, they should be considered in equity as holding the partnership assets *in trust* for the benefit of the firm creditors; and they cannot by a transfer of the one to the other defeat this *trust*. As stated in *Bird* v. *Morrison*, 12 Wis., 153, 'the partnership property is subject to an *implied trust* in favor of the partnership debts.'"

The judge also says: "A sale by one partner to the other when the firm is insolvent, and upon the eve of bankruptcy, as in this case, which, if upheld, would operate to apply the interest of the retiring partner to the payment of the individual liabilities of the purchasing partner, is *presumptively fraudulent as to firm creditors*, and the courts should set aside such a sale, and distribute the property as firm property in payment of firm debts."

The judge then refers to a case which had been cited as declaring a different doctrine, which he criticises, (pp. 124, 125,) and then says: "That case lays down the rule correctly as applicable to *solvent* partnerships; but in cases where the firm is *insolvent*, I am not satisfied with the reasoning." Citing other authorities, he continues: "I think where the firm is insolvent the partners should be considered rather in the light of *trustees* of the firm property," &c.

True, in this case the assets, at the time the decision was announced, were *in custodiam legis*: but it was not because of that fact that they were held to be a *trust* for the benefit of firm creditors, but because of the condition of the partners before the assets came into the custody of the court, to wit, their insolvency. The court having control of the effects duly applied the law, and held them to be

treated as trust effects. But cannot a court of equity *take control* of trust property, expressly for the purpose of protecting the rights of the parties entitled to the benefit of the trust?

It may be added, in passing, that the fact that the transfer was to a partner, instead of a third person with notice, could not have varied the rule.

We pass to state the rule in Louisiana, as held in the case of *Smith* v. *McMicken*, 3 La. Ann., 319. A partnership creditor had levied upon and sold a judgment which was a partnership asset; and the question was as to the validity of such sale, &c. In the opinion delivered the court define many of the attributes of a partnership as prescribed by Louisiana law, and point out some of the differences between the law of that State and the common law as to the rights and powers of partners, which cannot be here quoted at length. But the court say: "A partnership once formed and put into operation becomes, in contemplation of law, a moral being, distinct from the persons forming it. It is a civil person, which has its rights, attributes," &c. * * * "Therefore a partnership creditor cannot seize an asset of the firm, or the interest of one partner in such asset, but must await a final adjustment," &c. * * * "If numerous creditors of the partners may seize and sell particular assets, how can the partnership be liquidated? The partnership assets *are a trust fund for the partnership creditors*, who are to be paid before the respective partners or their creditors can receive anything. If a creditor of a partner could wrest control of the assets from the partnership, he could do what a partner himself could not, which would be in direct conflict with article 2841 (now numbered 2870) of the code, which provides that "every partner may make use of the things belonging to the partnership, provided he employs the same to the uses for which they are intended, and does not use them in such

a manner as to prevent his partners from using them according to their rights or against the interest of the partnership."

Although this decision is here cited to show that by the law of Louisiana partnership assets are a *trust fund* for the partnership creditors, it also has an important bearing upon other points hereafter to be noticed, and the entire case is worthy of a critical examination by the court. Another provision of the article of the code last cited prescribes, that "In other than commercial partnerships a partner cannot, as partner only, and if he has not the administration, alienate or engage the things which belong to the partnership." This provision shows how thoroughly, by Louisiana law, the assets of an ordinary partnership are secured to the partnership creditors, for the protection of their interests. It also has a material bearing upon the effect of some transfers involved in this suit, and hereinafter to be more particularly noticed.

IV. Upon a very thorough review of article 2823 of the Louisiana Code, and adjudications growing out of it, we have come to the unwavering conclusion that there must be an affirmative answer to the fourth of our series of questions, and that for this reason, if all others are held insufficient, a rehearing must be accorded. This review has demonstrated to the minds of counsel that, in this particular at least, the Louisiana Code is far in advance of the common law, or even the general rule controlling courts of equity, and more in accord with the commercial proprieties and exigencies of the age.

It will be remembered, that on the hearing, and while Mr. Miller, of counsel for respondents, was addressing the court, one of its members (Mr. *Justice Miller*) propounded to him a very pertinent and significant inquiry, which we will endeavor to recall, as nearly as may be, in his own words. It was this:

"Mr. Miller. While courts of equity hold, or have held, that the rights and priorities of partnership creditors to have partnership assets appropriated to the payment of their claims, are only to be worked out through the equity of a partner, by subrogation, as it were, is not the law of Louisiana different?" "Does it not directly give the partnership creditor a right to be paid out of the partnership effects? In other words, may it not be that your code, whether wisely or unwisely it is needless to say, has avoided this indirect, circuitous mode of relief, and given the creditor a remedy against the assets in his own right, and without regard to the will or equity of the partner?"

It may also be remembered, that counsel to whom this query was addressed did not give to it an entirely satisfactory answer. It must be confessed, too, that counsel who closed for complainant did not refer to it all. This was partly because he was then so hopeful upon other grounds, partly because his attention was largely turned to other points by queries propounded to him by several members of the court, but chiefly because he had not time to notice very many points that should have been discussed. If its importance had then impressed him as it did shortly thereafter, and long before the decision was announced, he certainly would have affirmed the correctness of Mr. Justice Miller's surmise, (for such was the theory of our brief,) although he had not then so carefully considered the Louisiana decisions as since.

We now proceed to demonstrate, as it is believed can be done, that article 2823 of the Civil Code, in connection with one or two others, and as construed by the adjudications of Louisiana, does secure to a partnership creditor the right to be paid by preference and privilege out of the partnership effects, so far as sufficient; that this right cannot be avoided by any act of the partners as between themselves, nor by any transfer to a third party with notice; but that such assets may be pursued and subjected to the

preference in the hands of a third person purchasing them with knowledge that they were partnership effects, and that if such effects cannot be reached, such purchaser may be held liable for their value. To establish this proposition, several cases will be quoted at length, which were cited (as was 3 Ann., 319, *supra*) in our brief, and some others—still more in point, if possible—will be given. But first let us quote said article 2823, and see what is its fair import, without reference to judicial construction. It is as follows:

"Article 2823. The partnership property is liable to the creditors of the partnership *in preference* to those of the individual partner; but the share of any partner may, in due course of law, be seized and sold to satisfy his individual creditors, *subject to the debts of the partnership;* but such seizure, if legal, operates as a dissolution of the partnership."

The word *lien* is not a common technicality of Louisiana law, but the word *privilege* is its equivalent; and the phrase *in preference*, or *by preference*, has often the same signification. Article 3186 of the code defines a privilege as "a right which the nature of the debt gives a creditor, and which entitles him to be *preferred* before other creditors, even those who have mortgages."

Now, this definition could be changed to read, "and which entitles him to be paid in preference, or by preference, before other creditors," and the sense or meaning would be the same. Thus it appears that the words by preference, or in preference, are the significant ones to define what a privilege is, as growing out of the nature of a debt; and when it is considered that partnership assets are subjected "in preference" to the partnership creditors because of the nature of their debt, to wit, because it is a debt against the firm, it is very clear that article 2823, by its own language, directly secures to such creditors a privilege, or lien.

See, furthermore, the limitation upon the power to seize

and sell by due course of law to satisfy the individual creditor of a partner. It can only be done "subject to the debts of the partnership"; but surely the Legislature must have intended that a sale by such process should confer as much title as a partner could confer by private sale with notice. And thus it is clear the intent was that the privilege should attach to the property in the hands of any purchaser taking it with knowledge of its character. Of course, the purchaser of a partner's share under legal seizure and sale must necessarily buy with such knowledge. Now let us suppose some facts in illustration. A and B are partners, owing firm liabilities, and each being individually the debtor of C. C procures a judgment against each partner, by virtue of which he seizes upon, sells, and bids in the individual shares of A and B in the firm; that is to say, upon the judgment against A he seizes A's firm interest, and upon that against B he seizes B's interest, and duly bids in both at sheriff's sale. Thus he becomes the owner of all the partnership effects; but according to the literal wording of article 2823 he holds such effects subject to the preference thereby given to firm creditors. This is too clear for argument. But suppose, instead of resort to legal process, A voluntarily assigns his share to C, and B subsequently makes a similar assignment, each being made to satisfy their individual debts, and C taking such transfers well knowing that he is becoming possessed of what had previously been partnership property: Will it be for one moment pretended, that in the first instance the preference continues, while in the last it is extinguished? In other words, that a partner can secretly and privately do what the law says cannot be accomplished by public legal proceedings? There can be but one rational answer to these questions, and this is fully sustained by authority, as will appear by the following decisions:

Morgan v. *His Creditors*, 8 N. S., p. 606.

Gardner v. *Smith*, 12 La., 371.

Priestly et al. v. *Brisland*, 9 Rob., 425.
Smith v. *McMicken*, 3 Ann., 319, *supra.*
Succession of Beer, 12 Ann., 698.
Saloy v. *Albrecht*, 17 Ann., 75.
Perry Syndic v. *D. Holloway*, 6 Ann., 265.

Perhaps this last case should have been first, as, notwithstanding its brevity, it covers our whole case, and is decisive of every point now under consideration; but the others are in harmony with it.

The case of *Morgan* v. *Creditors*, above cited, was not only decided at an early day after the adoption of the code, but it was decided by a jurist second to none the State has ever known. We make but a single extract from his opinion. Speaking of the legislative action in regard to this very article 2823, he says: "They have given a *privilege* to creditors of a partnership on the partnership estate." This was the language of Judge Martin, who was not only eminently learned in the technical words and phrases of the Civil Code, but too critical and accurate in his utterances to use words or phrases in any other than their legal sense. When, therefore, he used the word *privilege* as above, he meant by it precisely what it technically means as defined by the code.

Gardner et al. v. *Smith*, 12 La., 371, was an attachment suit brought by plaintiffs as acceptors of a bill of exchange for $4,100, drawn by defendant, of Mississippi, which they alleged they accepted and paid upon an agreement that defendant, with the proceeds, should enter for them five sections of land. They averred that defendant Smith misappropriated the money; prayed for judgment for amount of the bill and $2,500 damages, and for an attachment against the property of Smith in the hands of George Chaplin & Co. of New Orleans, and that the latter be cited as garnishees, which was done.

The garnishees being absent, their agent answered that they had no property in their hands of the defendant Smith, but that if Smith was a partner in the firm of Turner H. Jackson & Co., he had an interest as such partner in certain property which had been taken from the garnishees by the sheriff by virtue of the attachment in that suit. It was also stated that said garnishees had held other property of said Jackson & Co., which had also been taken by said sheriff, in another suit against Smith. Said agent set up, on behalf of said garnishees, that they had a *privilege* on all said property of said Jackson & Co., because of certain debts, &c., due from said firm to said garnishees, amounting to $3,075, which he prayed might be enforced, &c. The attachment was levied October 1, 1836. Garnishees' answer put in October 7, 1836.

On the 13th February, 1837, said garnishees sued out an attachment against said Jackson & Co., based upon their claim, and seized the said property already in the sheriff's hands; but meantime, January 8, 1837, the firm of Jackson & Co. was dissolved, and Jackson sold his interest to Smith and others.

Jackson intervened in the original suit, and alleged that the goods attached were the property of said Jackson & Co., and not of said Smith; he further averring that Smith had no interest in said goods that could be attached for his debts, because said Jackson & Co. had made no profits, &c.

One point made in the Supreme Court was, that as said garnishees had not sued until after the firm of Jackson & Co. was dissolved and its assets transferred, they could not attach such assets as against such vendee, and claim their privilege as partnership creditors. But the court said: "The only question is, whether the property attached belonged to defendant individually at the date of plaintiff's attachment. The appellees rightly contend that it did not, because no act of the partners could destroy the right of

the creditors of the firm to its effects; and if the property passed at all to the defendant, he took it subject to the burden imposed by law." It is proper to say that the report of this decision appears somewhat imperfect, but it clearly establishes the proposition just stated.

For want of time, we must be content to copy the abstract of *Priestly et al* v. *Bisland et al.*, 9 Rob., 425, as it appears in our original brief, though we would gladly give, and hope the court will read, the case at length. It is not only decisive as to the points under discussion, but in effect decides, that although an ordinary partner is only bound personally for *his* share of a partnership debt, yet the whole of the partnership property is subject to the privilege for such debt. It was a case where one member of an *ordinary partnership* caused his partner's share to be seized and sold to satisfy a debt due to him individually, and became the purchaser. Afterwards, certain creditors of the partnership sought to enforce their privilege as such upon the partnership property in the possession of the purchasing partner. The question was, whether the property of the partnership, now entirely owned by Bisland, was liable in his hands for the payment of the joint debts? The court said: "We think it is. Bisland, who is one of the partners, took the property in payment of a part of his individual debt; but he must be presumed to have been cognizant of the claims standing against the partnership, and to have purchased the property subject to the rights of the creditors, who cannot be prejudiced by any act of the partners between themselves." Then, quoting article 2794 (now 2823) of the code, the court continued: "It is perfectly clear, from this text of the law, that when Bisland caused his partner's share to be seized and sold to satisfy his individual claim, and became the purchaser of said share, *he bought it subject to the payment of the partnership debts*; and if so, he stands with regard to the creditors of the partnership in a

situation very similar to a third possessor of property mortgaged, who is bound either to abandon the property to the exercise of the creditor's right of action or to pay the debt. How this would be with regard to an innocent third person becoming the purchaser of partnership property without notice, is a different question, which it is now unnecessary to consider; but we are satisfied as to Bisland, who had either a real or constructive notice, that he cannot object to the preference which the law gives to the partnership creditor who finds the partnership property in his possession. The doctrine recognized by the 2794th article of the Civil Code, is fully developed by Pardessus, Droit Commercial, vol. 4, No. 1089, whose opinion on this subject is in concordance with that of Troplong, Privileges et Hypothéques, vol. 2, No. 434."

In *The Succession of Beer*, 12 La. Ann., 698, Merrick, J., says: "This case presents the single question of whether the sale made by two of three members of a commercial partnership to the third partner deprives the creditors of the partnership of their *privilege* upon such effects of the partnership as may be found in the succession of the latter" (third partner). He cites article 2823 of the Civil Code, and then, on page 699, says: "Here the privilege is given to the creditors by express law. It is now incumbent on the party who maintains the loss of the right *thus expressly granted* to show some provision of the law extinguishing the privilege in this case, or exempting it from the operation of the general rule. None such has been shown." Again citing from the code, he continues: "On general principles, we think it ought not to be in the power of partners, by any act between themselves, to defeat the rights of creditors, and the partnership effects must be held to be subject to the privilege so long as they remain in the hands of any of the partners."

It is true, that in this case the assets of the partnership were in one sense *in custodiam legis;* and it is also true, that the judge speaks of the privilege as continuing so long as the assets remain in the hands of a partner; but other cases show that neither of these facts is essential to the continuance of the privilege. In fact, such is the effect of this decision, the right of the partners is defined as a privilege without any intimation that the word is used in other than its technical sense, and it is enforced or respected *because it is granted by express law.*

In *Saloy* v. *Albrecht*, 17 Ann., 75, the language of the court is: "The partnership property is the common *pledge* of the partnership creditors;" and if Judge Campbell was correct in saying that the word pledge was here *loosely* used, the court at least meant by it to recognize the privilege of partnership creditors.

Lastly, we cite the case of *Perry Syndic* v. *D. Holloway*, 6 Ann., 265, which, as already stated, seems to cover the entire ground. Here, years before, Holloway had bought at sheriff's sale, the interest of one partner (Powell) of the firm of Harris & Co., and afterwards purchased the interest of the other partner (Harris). Thus the assets of the partnership had passed out of the control of the partners *into the hands of a third party.* There is no charge of *mala fides* in regard to these sales, though it is charged that afterwards Holloway acted in bad faith towards certain individual creditors of Powell, and he knew he was purchasing partnership assets. On page 266 the court say: "*By buying out the interest of the partners and receiving all the assets, he (Holloway) became himself the debtor of the creditors of Harris & Co., at least to the extent of these assets.*" And he was held liable accordingly.

If this case does not affirmatively answer every question involved in our fourth proposition, and establish the liabil-

ity of respondents, as prayed by complainant's bill, then we fail to comprehend the meaning of language.

V. Other points must be discussed with a brevity that is to be regretted. Our fifth point questions the validity of the transfers as affecting the rights of complainant under said article 2823, &c. In view of the authorities above cited, it is scarcely necessary to dwell upon it; but we wish to recall some facts, and make one or two suggestions as to them upon general principles.

Graham assigned his interest in the partnership to the New York Bank, as security for a debt he owed as agent of complainant's bank, May 8, 1867. This transfer was duly registered in Louisiana on the 15th of the same month, one day before May's assumed assignment was perfected, by his attempted transfer of the lease. (See Record, p. 26, 54, and 55.) What could and did pass by this assignment of Graham was explicitly decided by this court in *Bank* v. *Carrollton Railroad*, 11 Wall., 629, where Mr. Justice Strong says, in substance, that Graham's interest in the partnership was only his share of what might remain after payment of the partnership debts and his liability to the firm; that this was all that could be transferred, either voluntarily or by sale on execution; and that nothwithstanding the broad language used, this was the utmost the New York Bank could or did acquire by the assignment. Beyond question, this was sound law; and, in view of it, we are tempted respectfully to ask: If this was all that Graham could and did transfer, what more could or did May turn over by his assumed assignment to the United States; and, consequently, what more have those obtained who (so to speak) claim under him? Does it not follow that Boneval, Binder, and Hernandez only acquired, and therefore only conveyed, under the act of fusion, the interest of May in the partnership, after payment of the partnership debts and his liabilities to said firm? We confess we see not

how this conclusion is to be avoided; and if it cannot be, it conclusively answers the theory of the court, that there had been such complete transfers of the EFFECTS of the partnership as to cut off the right of complainant to relief. Neither May nor Graham could transfer the *effects* at all, but only their interest in them, after payment of all firm liabilities.

We return to the assignment made by Graham May 8, to say that it was the only one he ever made. This we assert, 1st, because its effect was to revoke and annul all authority that May possibly had up to that time under a power of attorney to control Graham's interest; 2d, because the power of attorney May held was one, in legal effect, empowering him to act only in Graham's behalf; in other words, for what was apparently Graham's benefit. Was it acting for Graham's benefit, for May to appropriate the entire value of his interest to the payment of his own debt? Was it not, more properly speaking, an attempt to rob him,—as thoroughly so as though he had essayed to knock him down and pick his pockets?

We have not patience to extend these remarks. The only ground upon which this court could have held the action of May in this regard valid, was upon the theory, asserted with characteristic coolness and daring by counsel for respondents, that Graham was only a "figurehead" in the firm. Counsel for complainant did not notice this assertion at the hearing (there was not time to do so); but in this argument it has been denied in advance, with a general reference to the record evidence overwhelmingly refuting it. We hope that evidence will be carefully scanned, to satisfy the court that said assertion was only one of the devices of May, put forth, possibly, to save himself, when there may have been visions—even if shadowy—of grates and bars!

Enough has been said to show that the record exhibits no such transfer of the EFFECTS of the partnership as can prevent the complainant from asserting the privilege given by said article 2823, nor perhaps from claiming relief upon more general principles. There is a reference in the opinion to a provision of article 3244, (now numbered 3277,) which declares that "privileges become extinct by the extinction of the thing subject thereto." We cannot speak from knowledge of the construction given by Louisiana decisions to this provision; for we have not had time to read them; but our belief is, that it applies primarily and solely to cases of actual destruction of things subject to privilege. For example, a horse or a mule, or, formerly, a slave, is pledged, and dies: the privilege created by the pledge is gone. Or grain, flour, or spirits in store, being pledged, are burned: the result is the same. Goods mortgaged on shipboard are thrown or lost overboard: the mortgage privilege is extinct. Now, be it remembered, the privilege of a partnership creditor is upon the partnership effects. A partner can transfer, not the effects themselves, but simply his interest in them, as before stated: surely such a transfer cannot extinguish the privilege upon the effects.

We may add that, upon its face, Graham's transfer was but a mortgage security for a debt. The payment of that debt will revest in him all his original rights as partner; and to such rights the respondents can set up no claim.

VI. The argument, as already advanced, embraces all that need be said, at least all that time will permit, upon the point made by the sixth inquiry; and we pass to the discussion of those involved in the

VII. This, too, has in part been anticipated. If an individual partner can only pass by assignment such interest as he may have in what remains after all partnership debts and his own to the firm are extinguished, the conclusion is

inevitable that this partnership property has never been wholly transferred to others. Of course this rule does not apply when it is the business of the partnership to buy and sell, as in case of merchants. One mercantile partner may sell the goods bought for that purpose, in the ordinary way; but even he may not, by a single transaction, sweep out the entire stock to satisfy his own debt. This may be unimportant, because a mercantile is a commercial parthership under Louisiana law, while the one under discussion was an "ordinary" one; and the clause of article 2870, quoted while considering our third proposition, positively inhibits the alienation of the things (effects) of such a partnership by one of the members "not clothed with the administration." It is not pretended that power of administration was vested in May by the articles of partnership, and even Beauregard, under said articles, had authority only to manage, not to sell.

In this connection we desire to state a case recently decided in Louisiana in regard to the right of one number of an ordinary partnership to sell the effects as limited by this last quoted article, and one other mentioned in the decision. It is the case of *Bass* v. *Messick et al.*, reported, as we understand, in 30 *Ann.*, 373; but that volume has not yet reached this city, and we are obliged to rely upon a manuscript statement of the case, forwarded for the occasion. The book will soon be here. The case was this:

Under an execution issued upon a judgment rendered against "*Bass & Co.*," a planting, and, therefore, ordinary partnership, composed of J. W. Bass and L. Lyon, an engine and other movables were seized, in possession of Alfred S. Bass (not a partner).

These movables (except some mules) belonged *originally* to Bass & Co., who were insolvent and largely indebted to Alfred S. Bass and D. W. Bass, sons of J. W. Bass, one of the partners.

J. W. Bass confessed judgments *individually* in favor of Alfred S. and D. W. Bass, and transferred the property, which was seized as above, to them.

On appeal, the Supreme Court said:

"The evidence satisfies us, as it did the district judge, that these *datims en paiement* were not simulations, but real contracts, with valid considerations to rest upon. So far, therefore, as they transferred the property and interests of J. W. Bass, they could not be attacked by seizure, however fraudulent they may have been as to other creditors over whom preference was thus given.

"But, as before stated, the property transferred to A. S. Bass, and seized by the sheriff, belonged to the partnership of J. W. Bass & Co., an ordinary planting association. Plaintiff's counsel contends that as J. W. Bass was the managing partner, he had the right to sell and dispose of the partnership property *in liquidation of the partnership debts*. It is not pretended that J. W. Bass derived any such authority from the articles of partnership, nor that any special power was ever given him by his partner Lyon to do so. True, it is shown that, by Lyon's acquiescence, and perhaps consent, J. W. Bass managed and administered the partnership business, but we do not think the power to alienate the property composing the capital of the firm can be inferred or implied from this fact. We think that it clearly results from articles 2867 and 2870 of the Civil Code, that the power of administration which carries with it that of alienation must be *specially* given in writing, either in the articles of partnership or otherwise.

"It is further contended that Lyon was advised or knew of these transfers by J. W. Bass to his sons, and made no objections. J. W. Bass so swears, but Lyon, who seems to be without interest in the matter, swears that they were made without his knowledge, consent, or acquiescence. A. S. Bass swears that Lyon saw him using the things for his own purposes, but admits that he does not know that he was aware of their having been transferred to him by his father. Another witness swears to a conversation with Lyon, but speaks hesitatingly about it, and, at most, says that Lyon knew of the transfer.

"We think the district judge correctly held that Lyon's

half of the property was not conveyed by the acts of J. W. Bass."

And the seizure was maintained.

The article 2867, referred to in the foregoing decision, only vests in the partner specially clothed in writing with the administration, power to do "such acts as are without fraud, and, in his opinion, for the benefit of the society" (partnership). Of course his opinion must be reasonable. He could not reasonably be of the opinion that it would "benefit the society" to use all its effects in liquidating his own debts.

We shall not dwell long at present upon any question of fraud, actual or constructive, but would like to save the point, if practicable, for a future occasion. The opinion states upon general principles of equity "the assignment must be not *mala fides*;" and in the case referred to as decided by Lord Eldon, there was, if we remember rightly, a stipulation for the payment of the partnership debts. If the transfer attempted by May had contained a similar stipulation, it certainly would have worn a much more lovable countenance.

In regard to the act of fusion and preceding transfers, we do not forget that the court say they "discover nothing to impeach the *bona fides* of the transactions." But neither can we forget certain significant facts; as, for example, that the parties to said act (putting out of view for the present the construction urged in our second proposition) assumed to appropriate to themselves property valued by them at $800,000, one-half of which value may be said to represent what had been the partnership interest, and very largely made with the money of the bank;* that they did

* If this language strikes the honorable judges as exaggeration, we beg them to look critically into the exhibits conveying property purchased by the partnership, and particularly into the account of receipts and expenditures and debts of the partnership, as shown, R., pp. 101

this knowing that it had been partnership property, which the law of their State dedicated to partnership creditors as a *trust fund* for the payment of their debts; knowing, also, of this particular indebtedness, and how much it had contributed to swell the value of the property, not excepting even the railroad itself; knowing, further, that the individual partners were insolvent, and that the success of the proposed arrangement was equivalent to saying to complainant that he should never realize one farthing of his claim: and, remembering these facts, we confess it requires a completely exhaustive draft upon our charity to believe the transaction *bona fides!*

True, fraud is not to be presumed; but generally it is to be inferred from leading facts; and it is a valuable and applicable axiom, that "men should be presumed to intend what they know must result from their acts." We need not further enlarge; for, if not entirely mistaken in the views already presented, it is not essential to establish actual fraud, nor any save what those views may impute.

In dismissing the topic, we might refer to the proposition of the opinion, that if there was any fraud it was one against the partnership, which the partners could waive; and, recalling the fact that Graham had only mortgaged his interest, ask, when did he waive the fraud upon the partnership, or even upon himself, involved in the transfer made by May? And when the fact that some partnership debts were provided for by the act of fusion is brought forward to clear that act from taint, we respectfully ask the court to note, that, with the exception of very few, for com-

to 108. Let them note that the total expenditures were over $500,000; that the net earnings of the road were only some $19,000; then observe the inconsiderable sums paid in by May & Graham, or received from old material sold; and, we ask, where, save from the bank, did the large balance come from, with which the value of the property was so materially enhanced?

paratively small amounts, the debts thus provided for were such as were already secured by privilege upon the partnership property; and the new company had only the option to pay such debts, or lose such property. We cheerfully concede all the honesty apparent in this feature of the transaction.

Nor shall we waste time upon the proposition, that "all the partnership effects had been transferred to others for valuable consideration." According to all the authorities, (that of this court, in 11 *Wall.*, *supra*, being a leading one,) neither May nor Graham could, or did, transfer the "effects"; and in regard to considerations, while it may be true that, as between parties thereto, there was a consideration for each transfer, yet it is equally true, that from none of them did any consideration inure to the partnership. On the contrary, the effect of each and all was to pillage it from first to last. But we must no longer linger.

VIII. The eighth point involves the question of whether the fact that complainant was only a simple contract creditor, was an insurmountable barrier to the relief prayed? In other words, should he first have obtained a judgment at law, and a return of *nulla bona* upon execution?

If time would justify, and if we had attained the professional eminence of some whose experience has been no greater in years, we would take advantage of that prestige to suggest to this tribunal of last resort, that in practice the general rule in this regard, even as applied to a "creditor's bill" proper, quite as frequently works unnecessary cost and delay as any useful end; and that it is high time to avoid the old-time tardiness and adopt a rule more in consonance with the railroad and telegraph speed characteristic of modern business. The case at bar illustrates the propriety of the suggestion, and how unnecessary the old rule may be; for, even if our account was denied, as it is not, surely a court of equity has the instrumentalities for

stating an account; it can render a decree for money, and enforce it when rendered. Why, then, compel a party to go first to a court of law under such circumstances, and when it is certain that he must go at last into chancery? But perhaps it belongs not to us to suggest innovations; and though the old rule was wholly of judicial origin, it may be that needful change should come from legislation, as it has in several States.

It only remains, upon this point, to refer the court to the cases cited in regard to it in our original brief, particularly the case of *Lawton* v. *Levy*, 2 Edwards' Chancery Reports, 201, and to mention one other, to wit, *Coxe* v. *Fort Henry Iron Co.*, 12 Barb., 27. This last case would seem to be as conclusive as the one in 2 Edwards; it being that of a bill filed by a simple contract creditor. True, the court said "the bill should be filed in behalf of all creditors of the partnership," but it is to be remembered, that in our case the record shows that all creditors (save complainant) have been fully provided for; consequently nothing was necessary in their behalf.

The ninth point propounds the inquiry whether the bill should not have been "dismissed *without prejudice*" in the court below? As to this, we may state for one proposition, as was done at the hearing, that where there is nothing in the way of the relief sought, *or of some proper relief*, save the lack of a judgment at law, and a return of *nulla bona* on execution, the practice would seem to be to dismiss without prejudice, so that complainant may thus perfect his equities. In *Daniels' Chancery Practice*, vol. 3, p. 2357, there is the form of a decree for this precise state of things.

See, also, *Palmer* v. *Rankins et al.*, 3 Ark., 771.

House v. *Mullen*, 22 Wall., 46, 47.

In this case this court so ordered *sua sponte*, though it was not a creditor's bill.

X. The tenth interrogatory is general; put in out of abundant caution; and under it we have no special suggestion to make.

A word before concluding as to notice of the bank claim. For a short period, all parties supposed the balance was some $112,000, instead of $237,000. But all knew of the false credit of $40,000, and that should have excited suspicion of the still larger one of $125,000.

Our Code citations are from Voorhies' late edition; evidently a different one from that referred to in the opinion.

Here we close the argument, because we must; and because wholly confident that the question, whether or not an error or oversight has occurred, is now submitted to a tribunal where all proper and justifiable pride of opinion will ever be made subservient to an unbending purpose to do exact justice by truly administering law.

CHAS. CASE,
J. D. ROUSE,
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Washington D.C.
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